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16th June 1897

POPULAR INFORMATION

AS TO

DIVISION COURTS.

DUTIES OF CLERKS AND BAILIFFS.

A GUIDE FOR SUITORS AND SOLICITORS,
ETC., ETC.

BY

W. H. HIGGINS

Of the Department of Inspector of Division Courts.

TORONTO:
HART & RIDDELL,
1894.



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TO WHOSE KINDNESS AND TUTELAGE, IN THE DEPARTMENT, THE
AUTHOR IS CHIEFLY INDEBTED FOR WHATEVER THERE
MAY BE OF MERIT IN THE INFORMATION
COMMUNICATED IN THE FOLLOWING
PAGES.

W. H. HIGGINS.

Toronto, November, 1894.

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TO THE READER.

A few pages of useful hints to the clerks and bailiffs of Division courts, which might help them in the performance of their duties, was the first intention of the writer.

The constant correspondence with those officers ; answering the daily applications received at the Department, for advice and instructions, suggested the necessity for something of this kind.

As the work progressed, however, the importance of extending its scope came to be realized. A large and ever-increasing correspondence with suitors and solicitors showed that there was a further want to be supplied. And when the several amending acts to the Division Courts Act (passed since the consolidation of 1887), the increased jurisdiction and the changes made by the new Rules came under review, the plan of the work was accordingly enlarged, in such a way as to widen the extent of the information given, and make it more thorough and general, and

it is to be hoped more acceptable to the general public as well as to the profession and the officers of the court.

A cheap and handy book, written in a popular style, free from mere verbal repetitions and legal phraseology, and unincumbered, as far as possible, with notes of reference and those lengthy citations of cases, copious notes and annotations, which take up so much of the space of costly law books, has been aimed at, as well as simplicity of arrangement for easy reference. And if the author has succeeded in this, the main objects he had in view have been fully accomplished.

CONTENTS.

PART I.

DIVISION COURTS.—Jurisdiction—Number in County—County Board—Provisional Judicial Districts—Location of Clerk's Office—Holding Courts—The Judge—His Powers—Junior Judge—Deputy Judge—Legal Holidays—Seals—Separation of Counties—Clerk of the Peace—Officers of Courts—Appointments—Leave of Absence—Deputies—Tenure of Office—Vacancies—Covenants—Renewal of Covenants—Sureties Desiring to Withdraw—Liability of Sureties—The Inspector—His Duties and Powers—Books required to be kept by Officers.

CLAIM AND PARTICULARS.—What They Shall Contain—Suits under 82nd Section—Against Officers of the Court—Process—Duty of Clerk—First Process—Ordinary Summons—Special Summons—Alias or Pluries—Actions in other than Regular Division—Flooding Lands—Changing Venue—Summons Against Non-residents—Garnishee Summons—Amending Summons—Interpleader Summons—Summons in Replevin—Service of Summons—Substitutional Service—Renewals—Duties of Bailiffs—Clerk's Emoluments—Percentage Payable by Him—Returns—Partners—Adding Parties—Judgment by Default—Speedy Judgment—Withdrawal of Defence—Notice Requisite—Trial—Non-suit—Appeal—Who may Appear at Trial—Tender of Payment—Set-off.

WITNESSES' EVIDENCE.—Commission to Take Evidence—Books of Account, Affidavits, etc., as Evidence—Judge's Decision—New Trial—Juries—Jurors—Service of Summons—The Jury List—Tales—Fees for Jury Fund—Payment of Jurors—Garnishment.

COSTS OF PRIMARY CREDITOR.—Conditions before Judgment—No Levy on Garnishee until Money Due—Application for Order to Discharge Claim—Parties Remitted to their Original Rights—Payment made a Discharge—Security may be Ordered—Bond to be Taken—Claimant other than Primary Creditor—Judge may Postpone—Debt Attachment Book—Arbitration—Reference not Revocable—Entering Award—Award may be Set Aside—Affidavit—Administering Oath—Confession of Debt—Costs—Counsel Fee—Proceedings cannot be set aside for matter of form—Judgment and Execution—Under Creditors' Relief Act—Cross-judgment—Writ not to be Executed out of County—Exception—Payment before Sale—Transcript—Proceedings thereunder—Notice to Plaintiff—Revival of Judgment—Renewal of Execution—County Attorney may Renew when acting Clerk—Execution may be

Ordered before Regular Day—Application must be Founded on Affidavit—Execution to Sheriff—Against Lands—Equity of Redemption may be Seized and Sold—Money, Bank Notes, Promissory Notes, Cheques, etc., may be Seized—To be held for the Benefit of Creditors—How Suit may be Brought—List of Securities to be Prepared—Consent to Discharge of Action—Costs of Enforcing Payment of Securities—Date of Seizure to be Endorsed—Time of Sale of Goods—Officers not to Purchase at Sale—Exemptions—Judgment Debtors—Proceedings—Examination—If Discharged—Not to be again Examined without Notice—Failure to Attend—Payment for Attendance—Order of Committal—Who can Execute Warrant—Essentials—Renewal—Order may be Rescinded or Varied—Imprisonment does not Extinguish Debt—Offences and Penalties—Contempt of Court—Resisting Officers—Misconduct of Clerks and Bailiffs—Extortion—Negligence of Bailiffs—Execution against Bailiffs—Fines and how Enforced—Form of Conviction—Protection to Persons acting under Warrants—Defect or Irregularity—Limitation of Actions—Costs in Actions for Damages—Disposal of Fines—Disposal of Moneys paid into Court—Unclaimed Moneys—Forfeiture of Fees by Bailiff—Board of County Judges—Postage and Registration—Correspondence—Complaints against Officers—Tariff of Fees—Review of Tariff—Clerks' and Bailiffs' Fees—Fees to Witnesses—Fees to Appraisers—Fees in Suits where Claim does not exceed \$10—General Information—Concurrent Summons—Copy of Claim—Warnings—Set-off or Counterclaim—Summons, Confession—Certified Copies—Defence—Affidavits—Notices—Entering Judgment—Summoning Jurors—Settlement of Suit—Discontinuance of Action—Transcript—Transcript to Sheriff—Return must be Prompt to Entitle to Fee for Foreign Service—Costs—Duty of Clerk to Tax—Remarks on Recent Changes—Hints to Bailiffs—Courts and lists of Clerks and Bailiffs and their post-office—Limits of Divisions.

PART II.

REVISED RULES.

ALTERATIONS AND AMENDMENTS UNDER 57 VIC. CAP. 23.

ABSCONDING DEBTORS.

MISCELLANEOUS NOTES.

DIVISION COURTS DEPARTMENT.

INDEX TO RULES.

INDEX TO FORMS.

GENERAL INDEX.

A.

	PAGE.
ABANDONED—Where excess is.....	19
ABANDONMENT—Judge may permit of.....	19
ABATE—Cause shall not for want of jurisdiction, if entered in wrong division, sec. 87.....	34
ABSCONDING—Procedure against absconding debtors, sec. 249.....	196
Who are absconding debtors, sec. 249.....	285
Increased jurisdiction shall apply to claims against abscond- ing debtors, sec. 70.....	(c) 284
Affidavit for attachment, sec. 250.....	285
Duty of clerk.....	197
Who may issue writ.....	285
Affidavit to be filed with clerk.....	285
Execution of warrant, sec. 251.....	285
Not to be executed out of limits of county, sec. 214.....	285
Duties of officer.....	285
Proceedings commenced before attachment, may continue, sec. 253.....	285
Where several attachments issue, sec. 256.....	197
Distribution of proceeds.....	197
Where goods seized and sold insufficient, sec. 257.....	197
Duty of clerk in preparing list.....	198
Party dissatisfied may appeal to judge.....	198
Notice of list to be given.....	198
Warrant may be issued by justice of the peace.....	286
In case several judgments have been recovered.....	197
ABSCONDING DEBTOR—When property may be sold, sec. 260.....	197-8
ACCOUNT—Of fines.....	16
Beyond jurisdiction.....	33
Balance of.....	33
ACT (THE)—Interpretation of the word.....	189
ACTIONS—Where courts have jurisdiction.....	2
Where they have not.....	2-3
Personal.....	2
Debt, account, breach of contract, or money demand not ex- ceeding \$100.....	2
Claims where amount ascertained up to \$200.....	2
Of replevin.....	2
Against sureties of clerk or bailiff, sec. 39.....	12
Court where action tried to have full power, sec. 80.....	33
Commencement of.....	20
Division in which actions may be entered, sec. 81.....	34
May be brought and tried in court nearest to defendant's residence, sec. 82.....	19
When may be brought in other than regular divisions, sec. 83.....	20-1
Of replevin, sec. 72. (See replevin).....	23

ACTIONS—(*Continued*).—

	PAGE.
Causes of not to be divided for jurisdiction.....	32
Where bond given in any proceeding under the act may be sued, sec. 266.....	204
Judgment in to be a full discharge, sec. 78.....	33
Causes of may be removed by <i>certiorari</i> , sec. 79.....	33
For balance of account.....	33
Where defendant is a corporation, sec. 84.....	34
Where actions may be brought.....	34
Where money payable out of province, sec. 85.....	34
Place of trial, sec. 86.....	34
When entered in wrong division, sec. 87.....	34
By and against clerks and bailiffs, secs. 88, 89.....	34
By or against judge, sec. 90.....	35
By consent of parties, trial of may be in any division, sec. 91.....	35
Against partners.....	35
On promissory note, sub-sec. 2, sec. 94.....	2-19
Hearing of may be adjourned, secs. 118-119.....	42
Against non-resident.....	36
Limitation of, for anything done in pursuance of the Act, sec. 290.....	96
Shall be commenced within six months.....	96
Shall be tried in county where fact was committed.....	96
Notice in writing of, must be given one month before.....	97
If tender of sufficient amends before action brought.....	97
Or payment into court.....	97
Defendant may plead not guilty.....	97
Costs in actions against clerks and bailiffs.....	97
Plaintiff in not entitled to costs, if verdict for no greater amount than \$10.....	97
Discontinuance of.....	123
ADDING PARTIES—Provisions applicable, sec. 108 and sub-sections..	36
ADJOURNMENT—If judge does not arrive in time, sec. 25.....	6
Judge may adjourn hearing, Sec. 118.....	42
When tried by a jury, sec. 119.....	42
ADMINISTRATOR—Proceedings against.....	216
ADVOCATE—Who may appear as, sec. 120.....	42
Judge may prevent from sitting, sec. 121.....	42
AFFIDAVIT—Of a clerk, verifying account of fines, sec. 47.....	31
Verifying moneys paid in and out of court, sec. 48.....	31-2
Made out of the Province.....	25
With annual return to inspector, sec. 68.....	31-2
For order changing place of trial, sec. 86, sub-secs. 4 and 5.....	34
Alleging want of jurisdiction, sec. 87.....	34
For substitutional service, sec. 100.....	24
Clerk to prepare affidavits of service, etc., sec. 105.....	36
Of service upon a partner, sec. 108, sub-sec. 4.....	36-7
Before entering final judgment by default, sec. 109, sub- sec. 2.....	38
Of proof, sec. 110.....	38
On motion for speedy judgment, sec. 111.....	39
Of deft. to show cause against, sub-sec. 3.....	39
As evidence in action, sec. 142.....	47
Before whom may be sworn, sec. 143.....	47
For stay of execution, sec. 147.....	48
Clerk must prepare, to entitle him to fee.....	121

	PAGE.
AFFIDAVIT —With return of jury fees to county treasurer, sec. 170..	58-9
For attaching order, sec. 178.....	63
Of service of memorandum and garnishee summons, sec. 193.....	69
For attachment against absconding debtor, sec. 249, sub-sec. 3.....	285
AFFIRMATION —(See Affidavit).....	
AGENT —Meaning of.....	191
Any person may appear at hearing as, sec. 120.....	42
May be excluded from hearing, sec. 121.....	42
For service upon application for new trial, sec. 150.....	48
Failure to appoint, sec. 150.....	49
AGREEMENT —Not to appeal, sec. 116.....	41
ALGOMA —Clerks of courts in.....	129
Bailiffs of courts in.....	138
Limits of divisions.....	148
ALIAS OR PLURIES —Process when issued.....	20
ALTERATION OF DIVISIONS —Altering number and limits of.....	3
How and by whom made, sec. 13.....	3
Clerks of the Peace to record, sec. 20.....	8
Alteration of times and places for holding court, sec. 8.....	4-5
Alterations of amendments of Revised Rules, etc.....	281-4
AMENDMENTS —To the Act.....	1
May be made by judge in garnishee proceedings, sec. 198..	70-1
Of order on judgment summons, sec. 245.....	90
APPEAL —If—proceedings at trial.....	41
Parties may agree not to appeal.....	41
Clauses and rules regulating.....	41
May be made by any party to a cause, sec. 148.....	48
By parties to garnishee proceedings, sec. 148.....	48-9
Stay of proceedings for, sec. 222.....	79-80
Security to be given, sec. 149, sub-sec. 1.....	50
Subsequent proceedings, secs. 150, 151, 152.....	51
Costs, sec. 153.....	52-3
The Judicature Act (sec. 156) shall not apply, sec. 153.....	52
APPOINTMENT —Of deputy judge, secs. 22-24.....	7
Of clerks and bailiffs, sec. 27.....	8
Of deputy clerks and bailiffs, secs. 32, 33, 34.....	8-9
APPRAISERS —Appointment of, sec. 251.....	
Fees to, sec. 53.....	110
ARBITRATION —Arbitrator may issue subpoenas to witnesses, sec. 134	
Order of reference, sec. 200.....	71
Not revocable, except with consent of judge, sec. 201.....	71
Award to be entered as the judgment, sec. 202.....	71
Judge may set aside, sec. 203.....	72
Application must be made within 14 days, sec. 203.....	72
Arbitrators may administer oaths, sec. 204.....	72
ARREST —May be made by bailiff exercising authority as a constable, sec. 52.....	28
May be made by bailiff by virtue of warrant, sec. 242.....	89
Of judgement debtor, under warrant of commitment, sec. 242	89-90
Duty of constables and peace officers to aid in, sec. 243.....	90
ASSAULT —Of bailiff in the execution of his duty, sec. 276.....	91

	PAGE:
ASSISTANTS—Of clerks and bailiffs.....	9 ^a
ATTACHMENT—Warrants of to be issued by clerk.....	20
Justices of the peace may issue.....	20
In proceedings to garnish debts, sec. 173.....	60-1
Debts due for wages, sec. 174.....	61
Where debt contracted for board and lodging, sec. 175.....	61
Proceedings in case of wages or salary, secs. 176-177.....	61-2
Attaching order after judgment, secs. 178-179.....	63
Proceedings, secs. 178-184.....	63
Where primary debtors claim not a judgment, sec. 185.....	65
General provisions, sec. 188.....	67
Against goods of absconding debtor, sec. 249.....	196
When justice of the peace may issue, sec. 250.....	286
Duty of bailiff thereunder, sec. 251.....	285
Proceedings may be continued in court in which attachment issued, sec. 252.....	285
Where proceedings commenced before attachment, sec. 253.....	285
Property attached may be sold under execution, sec. 254.....	197
In case of several attachments, sec. 256.....	197
ATTACHMENT—Custody of goods seized, sec. 258.....	285
Where property seized by county constable, it must be handed over to custody of bailiff, sec. 259.....	285
On what terms goods attached may be restored, sec. 259.....	
If the debtor does not appear within one month, sec. 260.....	285
Where summoned personally, sec. 261.....	196
Proceedings against debtors, where process not previously served.....	197
Perishable goods, how disposed of, sec. 263.....	197
Bond of indemnity, sec. 264.....	197
ATTORNEY—May appear at trial, sec. 120.....	42
Judge may prevent from appearing, sec. 121.....	42
B.	
BAILIFF—Meaning of.....	190
BAILIFFS—Are executive officers.....	11
Offices of, and of clerk cannot be held by one person.....	11
Every court to have, sec. 26.....	8
Appointment of, sec. 27.....	8
To notify inspector of.....	8
Qualifications of, sec. 26.....	8
May be suspended or removed by judge, if appointed by judge, sec. 29.....	10
May be dismissed on report of inspector, sec. 30.....	10
Judge may suspend any bailiff for cause and report to Pro- vincial Secretary, sec. 31, sub-sec. 2.....	10
Leave of absence—Leave of absence, sec. 32.....	9
Deputy—May appoint deputy, with approval of inspector, sec. 34.....	9
Assistants not deputies.....	9
Deputies may be removed at pleasure.....	10
Sureties—Bailiff's sureties responsible for acts of deputy, sec. 34.....	10
Service in case of vacancy.....	10
Covenant of himself and sureties, sec. 35.....	11
Must be filed before entering on duties, sec. 36.....	11

BAILIFFS—(Continued).	PAGE.
Renewal receipt of Guarantee Co. to be filed, 57 Vic. c. 23, sec. 1, sub-sec. 2.....	12
Actions on covenants.....	12
Covenants to be available to suitors, sec. 37.....	13
Certified copies of to be received as evidence, sec. 38.....	13
Entries in books of to be <i>prima facie</i> evidence against sureties, sec. 39.....	13
If surety dies, removes, or becomes insolvent, sec. 40.....	13
Duty of bailiff thereupon.....	13
Not eligible for municipal office.....	8
Information as to covenants.....	13
Notice.....	13-14
Forfeiture of office for non-compliance with.....	13-14
BAILIFF—Procedure where sureties wish to be relieved, sec. 41.....	13
When responsibility shall cease, sec. 41.....	14
The Act respecting public officers shall apply, sec. 42.....	14
Liability of former sureties, sec. 43.....	14
Duties of—On separation of counties, sec. 17.....	8
After separation, sec. 18.....	9
Books to be kept by.....	17
To serve and execute process, sec. 57.....	27
To return execution within 30 days.....	27
To make return of service, sec. 57.....	27
Not required to travel beyond division, sec. 57.....	27
On receiving and returning execution.....	29
In making returns on writs of replevin and warrants.....	29
Entries in cash book.....	29
Not allowed mileage beyond limits of county, sec. 51.....	27
To pay over all moneys.....	28
Penalty for neglect.....	28
To attend every sittings.....	28
To exercise the duty of constable during the holding of court, sec. 52.....	28
To arrest, with or without warrant, and bring up offender, sec. 52.....	28
On delivering warrant to gaoler.....	28
On receiving an execution, to endorse time.....	29
On returning writs of replevin.....	29
What his cash book should show.....	29
Not to collect on commission, sec. 58.....	31
To give evidence before inspector, sec. 62.....	15
And produce books, etc., sec. 63.....	15
When unable to sell within the 30 days.....	27
If unable to realize—re-sale.....	27-28
To report to inspector on his appointment, sec. 64.....	11
And give particulars of sureties.....	11
To inform inspector of any change of sureties, sec. 65.....	11
To produce certificate of covenant, sec. 66.....	12
To keep fee book, sec. 67.....	17
To make annual return to inspector, sec. 68.....	32
Suits, By and Against—How he may sue and be sued, sec. 88.	12-34
Fees on execution.....	28
Enforcing judgment against, sec. 89.....	35

BAILLIFF—(Continued).

	PAGE.
<i>Service of Summons</i> —To receive summons from clerk sent from other divisions and return same, sec. 92.....	35
Service of summons, secs. 96, 97.....	22
Endorsement upon summons, sec. 98.....	21-22
When service to be personal or otherwise, sec. 99.....	22
Substitutional service, sec. 100.....	24
Service of process on corporation, sec. 101.....	34
<i>Where no Bailiff</i> —How process may be executed at a distance, and where no bailiff, sec. 103.....	10 35
Neglect in making return, sec. 104.....	35
Affidavit of service, sec. 105.....	35
Service on partners, sec. 106.....	36
Costs of to be taxed by clerk.....	14
<i>Duties</i> —Judge may require bailiff to be sworn and answer in his presence as to service, sec. 105.....	35
Service on partners, sec. 106.....	
Where judge certifies, may seize property of firm as well as that of defendants served, sec. 107.....	36
May take confession, sec. 205.....	72
Fees when goods in his possession are taken by sheriff under The Creditors' Relief Act, sec. 212 <i>b</i>	75
Payment of execution before sale, sec. 216.....	77
Return of <i>nulla bona</i> , sec. 223.....	80
<i>Enforcing Execution</i> —May sell equity of redemption, sec. 227.....	81
May seize and take money or bank notes, cheques, bills of exchange, bonds, etc., sec. 228.....	82
And hold same for benefit of plaintiff, sec. 229.....	82
And sue on them, sec. 229.....	82
Disposition of moneys realized thereunder, sec. 231.....	83
To endorse date of seizure on execution, sec. 232.....	83
To give notice of sale, sec. 232.....	83
Time of sale, sec. 233.....	83
Not to purchase goods seized, sec. 234.....	84
Action on warrant of commitment, sec. 242.....	89
On warrant of attachment against absconding debtor, sec. 249.....	90
Upon receipt of warrant, bailiff to seize and make inventory, sec. 251.....	197
Property seized to remain in custody of bailiff until disposed of by law, sec. 258.....	198
Allowed necessary disbursements for keeping same, sec. 258.....	198
To take possession of property seized by county constable, sec. 258, sub-sec. 2.....	198
On what terms goods may be restored, sec. 259.....	198
Service of process in proceedings against debtors, sec. 262..	285
Moneys made to be paid over to clerk, sec. 265.....	198
Residue, how disposed of, sec. 265.....	198
<i>Interpleader</i> —In case of claim by landlord, sec. 269, and sub-secs.....	199
Where more than one execution against the same property. sub-sec. 4.....	200
Landlords' claim for rent, sec 270.....	199
How to proceed, sec. 271.....	
If replevin made, sec. 273.....	202
When contempt of court committed, sec. 275.....	91

BAILIFF—(*Continued*).

PAGE.

<i>Misconduct of</i> , sec. 277.....	92
Acting under colour of process, sec. 277.....	92
Extortion, secs. 277-278.....	92
Making default in paying over money, sec. 277.....	93
Penalty for	
<i>Neglect of Duty</i> , sec. 279.....	93
Hints to.....	127-8
List of, with post office address and courts	138
Shall be ordered to pay damages upon proof of.....	93
Forfeiture of fees by	99
For neglect in returning execution, sec. 280.....	93
Proceedings against, and sureties for, sec. 280.....	93
Execution against, forthwith, sec. 281.....	94
Protection to, secs. 285-286.....	94
When joint defendant with clerk, sec. 287.....	95
Limitation of actions against.....	97
Notice of required.....	97
Tender of amends or payment into court.....	97
May plead not guilty.....	97
Costs when verdict for no greater damages than \$10.....	97
BAILIFF'S FEE BOOK—Entries therein.....	17
BAILIFF'S PROCESS BOOK—Entries therein.....	17
BAILIFF'S CASH BOOK—Entries therein.....	17
BANK NOTES—Liable to seizure, sec. 228.....	82
BARRISTER—May be appointed to act as deputy judge, sec. 22.....	7
Notice to be sent to Lieutenant-Governor, sec. 23.....	7
Clerk or his deputy cannot practice, sec. 22	7
Judge may refuse to allow to appear at hearing, sec. 121....	42
BILLS OF EXCHANGE—May be seized in execution, sec. 228.....	82
BOARD—Of county.....	3
BOARD AND LODGING—When wages of debtor exempt in action for, secs. 174 and 175	61
When exemption unnecessary, sec. 175.....	61
BOARD OF COUNTY JUDGES —Existing board's authority, sec. 297...	99
Appointment of, sec. 298	99
The inspector of Division Courts to be a member, sub-sec. 5, added to sec. 298, by sec. 3, 27 Vict., c. 23.....	15 100
Shall certify rules and forms, sec. 299.....	100
High Court judges may approve or disallow, sec. 300.....	100
Approved, shall have the same force and effect as if included in Act, sec. 301	100
Copies to be forwarded to the Lieutenant Governor and to be laid before the Legislative Assembly, sec. 302.....	100
Expenses of how paid, sec. 303.....	99
In cases not expressly provided for, the practice of the High Court may be adopted, but only the tariff fees to be allowed, sec. 304....	99
BONDS—By clerks and bailiffs, sec. 35.....	
To be filed with clerk of the peace, sec. 36.....	11
Covenant to be available to suitors, sec. 37.....	12
Certified copy to be received in all courts as evidence of execution, sec. 38.....	12

BONDS—(<i>Continued</i>).	PAGE.
Entries in books required to be kept shall be <i>prima facie</i> evidence, sec. 39.....	12
When new surety necessary, sec. 40.....	13
Proceeding when surety wishes to withdraw, sec. 41.....	13
Office forfeited if new security not given within time, sec. 40.....	14
(<i>See Covenant</i>).	
In replevin, sec. 72, and Rule 47.....	23-4
In appeal, sec. 149.....	50
In garnishee proceedings, sec. 196.....	70
Where suable, sec. 266.....	204
To be delivered up to the party entitled thereto, sec. 267..	
In attachment, sec. 259.....	197
To be given by creditor on sale of perishable goods, sec. 264.	197
BOOKS—Of clerks and bailiffs.....	17
Entries, how made.....	17
When supplied by county.....	18
When supplied by government.....	18
Application for.....	18
Entries therein evidence against officers, sec. 39.....	13
Procedure book, sec. 45.....	16
Duty of clerk to sign every page.....	17
Entries in and certified copies of to be evidence, sec. 45....	17
In city offices.....	18
To be open to all making search, and at all times accessible to judge and inspector, sec. 46.....	16-17
Disposal of on death or removal of clerk, sec. 50.....	
Punishment of persons wrongfully holding, sub-sec. 2, sec. 50	15
Inspection of, sec. 61.....	14
Inspector to see that proper books are provided and entries made in a proper manner, sub-sec. 2, sec. 61.....	14
Production of, when required in evidence, sec. 188.....	67
Receivable as evidence, sec. 142.....	47
Account of fines to be entered in.....	16
Cash book of clerk.....	16
Fee book.....	16
Order book.....	17
Judgment debtors' book.....	17
Bailiff's fee book.....	17
Bailiff's process book.....	17
Bailiff's cash book.....	17
BRANT—Courts and clerks in.....	129
Bailiffs.....	138
Limits of divisions.....	149
BREACH OF THE PEACE—When bailiff may arrest for, sec. 52.....	28
BRUCE—Courts and clerks in.....	129
Bailiffs.....	138
Limits of divisions.....	149

C.

CARLETON—Courts and clerks in.....	121
Bailiffs.....	139
Limits of divisions.....	159

	PAGE.
CASH BOOK—Of clerk	16
Of bailiff	17
CAUSE OF ACTION—Dividing or splitting, sec. 77	32
CERTIFIED copies of papers	121
CERTIORARI—Causes may be removed by, sec. 79	33
CHANGING PLACE OF TRIAL.—To procure same, sec. 86	34
CHEQUES—When liable to seizure under execution, sec. 228	82
CHIEF PLACE OF BUSINESS—Of corporation or firm, sec. 101	34
CITIES—Courts in	5
Where two courts have been established in	5
CITY—To be at least one court in each, sec. 3	5
Sittings of courts and offices in sec. 9	5
CLAIM—The claim—meaning of	191
To be entered with clerk	18
What it should show	18
What it should contain	19
When promissory note	19
In suits brought under sec. 82	19
Jurisdiction on, sec. 70	2
Combining claims, sec. 70, sub-sec. 3	32
Where may be brought and tried, sec. 82	19
When entered in wrong division, sec. 87	34
Copy to be entered with clerk, sec. 94	18
Notice of disputing, sec. 109	38
Of landlord, secs. 268-270	198
Where brought against officers of the court and their sureties	19
Where the excess is abandoned	19
When not furnished by pltf.	19
Fee for copy of	120
CLEAR DAYS—Meaning of	191
CLERK—Meaning of	190
Location of office of	3
In city, offices in same division, sec. 9	5
When he shall adjourn court, sec. 25	6
Every court to have, sec. 26	8
Qualifications, sec. 26	8
Appointment, sec. 27	8
Disqualification, sec. 28	8
Suspension or removal by judge, sec. 29	10
Dismissal on report of inspector, sec. 30	10
May be suspended by judge when appointed by Lieutenant-Governor, sub-sec. 2, sec. 31	10
Assistants and deputies	9
County Crown Attorney becomes clerk when vacancy occurs, sec. 50	10
Leave of Absence may be granted by inspector, sec. 32	9
May appoint deputy. sec. 33	9
Securities, Covenant—Shall give security by covenant, sec. 35 ..	11
Security of guarantee company	11
Covenant to be filed with clerk of the peace	11
To be approved of by judge	11
Certificate of filing, sec. 36	12

CLERK—(Continued).

	PAGE..
Covenant to be available to suitors, sec. 37	12-13
Certified copy to be received as evidence, sec. 38.....	11
Duplicate	12
Liability of parties to a former covenant.....	11-12
Renewal receipt of guarantee company to be filed.....	12
Forms of covenants.....	12
Actions on covenants.....	12
Information as to.....	13
Entries in books by, <i>prima facie</i> evidence.....	13
New sureties, sec. 40.....	13
Sureties to be reported to judge at every sittings... ..	32
On withdrawal of surety, sec. 41.....	13
Forfeiture of office for non-compliance with this section...	14
The Act respecting public officers applies.....	14
May be dismissed for misconduct or incompetency, sec. 30.	10
Eligible for municipal office	9
<i>Fines</i> —Account of.....	16
<i>Fees</i> —Fee book.....	16
Table of to be hung up in office, sub-sec 3.....	103
To be paid by plaintiff or defendant in first instance, sec. 54	28-9
If not paid, how enforced, sec. 55.....	271
Bailiff's fees to be paid by, sec. 56.....	271
To keep special account of fees forfeited by bailiffs, sec. 57.	271
To be kept by clerk, sec. 59.	29-30
Gross and net income.....	30
Percentage to be paid provincial treasurer	29
Clerks' emoluments.....	29 30-31
How percentages calculated.....	30
Shall not collect on commission. sec. 58.	31
Necessity for making prompt returns of	31
Inconvenience caused by want of punctuality.	31
On changing place of trial, sec. 87.....	34
<i>Actions By and Against</i> , sec. 88-.....	
Enforcing judgment against, sec. 89.....	35
<i>Duties of</i> —On separation of counties, sec. 17.....	8
In absence of judge to adjourn court, sec. 25.....	6
Shall not practise as a barrister or solicitor, sec. 28.....	8
To issue summonses, furnish copies, etc. sec. 44.....	20
Where summons not served in time to make warnings avail- able	29
To keep a record of writs and judgments, etc., sec. 45.....	20
To issue executions, tax costs and keep account of fines, etc., sec. 45.....	20
To see that process not used for improper purposes.....	21
To deliver to county attorney verified account of fines, sec. 47	32
To furnish judge with account of moneys paid in and out of court, sec. 48.....	31-32
Returns required to be made by.....	31-32
To make annual return of suitors' money in court, sec. 49..	31-32
To put up list in offices, sub-sec. 2.....	
To procure books, etc., for inspection, sec. 63.....	15
To inform inspector of appointment, sec. 64.....	15
To give particulars of sureties, sec. 64.....	15
To give particulars of change of sureties, sec. 65.....	15
To note Rule 117, on entering judgment.....	38

CLERK—(Continued).

	PAGE.
Not to issue summons where no jurisdiction.	21
To endorse on summons notice as to changing place of trial.	21
To produce certificate of filing covenant, sec. 66.	12
To make annual return of business, sec. 67.	15
To keep fee book, sec. 68.	16
To make annual return of fees to inspector, sec. 68.	31
To forward summons for service in other divisions, sec. 92. .	35
To enter and number, plttf's claim, sec. 94.	18
Promissory note, subject of suit, to be filed with, sec. 94, sub-sec. 2.	35
To annex particulars to summons, sec. 95.	19
May send process for service or execution direct to bailiff at at a distance, sec. 103.	35
To prepare affidavits of service, sec. 105.	35
As to notices.	35-56
<i>Summoning Jurors</i> , sec. 160.	52-53
To make return to county treasurer as to jury fund, sec. 170	58
Return for cities, sec. 171.	59
To pay fees of jurors, sec. 172.	60
<i>Garnishee</i> —Duties in garnishee proceedings, sec. 188, and sub-sec. 5.	60-67
To keep debt attachment book, sec. 199.	71
Entries therein.	71
To take confession, sec. 205.	72
<i>Transcript</i> —To prepare and transmit transcript, sec. 217.	77
To give notice of return of <i>nulla bona</i> , sec. 218.	78
CLERK—Shall not purchase goods sold under execution, sec. 234. .	84
To make annual return of commitments, sec. 243.	90
To issue warrant against goods of absconding debtor, sec. 249	196
To pay over fines, sec. 293.	97
To mail notice of payment of money, sec. 294. . . .	97-8
To pay over moneys unclaimed for six years, sec. 295.	98
Entitled to necessary postage with his fees.	101
List of, with P.O. address and courts.	129
CLERK OF MUNICIPALITY—To furnish voter's list, sec. 159.	56
Proceedings against for neglect or refusal, sec. 164.	57
Penalty therefor, sec. 165.	57
CLERK OF THE PEACE—To record the divisions and the times and places of holding courts, sec. 20.	8
Covenants of officers to be filed with him, sec. 36.	11
Fee to be demanded for filing and certificate.	12
Certified copy of covenant by him, to be received as evidence, sec. 38.	12
Guarantee company's receipt to be filed with.	12
COMBINING CAUSES OF ACTION—When claim for distinct causes may be combined, sec. 70.	33-4
COMMISSIONS TO TAKE EVIDENCE—Power of court to issue, sec. 135. .	45
Not usually granted for examination of applicant or his employee, sec. 136.	46
Proceedings thereunder, sec. 137.	46
Rules applicable, sec. 139.	46
Return of, sec. 140.	46
Costs of, sec. 141.	46
How recoverable.	46
Interrogations to be annexed to.	46

	PAGE.
COMMITMENT—For wrongfully holding possession of books, etc., sec.	
50.....	15
Must be to common gaol of county where arrested, sec. 50,	
sub-sec. 2.....	15
Order of commitment of judgment debtor, sec. 240, sub-sec.	
5.....	88
In what cases party summoned can be committed, sec. 241.....	89
Where order made, clerk shall issue warrant, sec. 242.....	89
Execution of warrant, secs. 243-244.....	90
Judge may rescind or alter order, sec. 245.....	
Discharge of debtor, sec. 245.....	90
Return of, to be made by clerk annually, sec. 248.....	88-9
Judge may commit defendant on examination, sec. 246.....	89
For contempt of court, sec. 275.....	91
For resisting bailiff, sec. 276.....	91
Of clerk or bailiff for misconduct, sec. 277.....	92
COMPLAINTS—Against officers.....	102
Particulars which should be given when making.....	102
COMMITTALS—To be reported to inspector.....	32
CONFESSIONS OF DEBT—Fee on taking.....	121
Clerks and bailiffs may take, sec. 205.....	72
On being proved, judgment may be entered, sec. 205.....	72
How proved.....	72
CONCURRENT SUMMONS—When issued.....	21
How marked.....	21
Costs of.....	120
CONSENT—Trial may by, be in any division, sec. 91.....	31
Requisites of.....	31
To an appeal and interpleader, sec. 148.....	49-50
CONSOLIDATED REVENUE—Costs of seal to be paid out of, sec. 6.....	7
Fees forfeited by bailiff to form part of, sec. 57.....	28
Fines to form part of, sec. 293.....	97
Unclaimed moneys to form part of, sec. 295.....	98
CONSTABLE—Bailiff to have authority of, sec. 52.....	28
To seize under warrant.....	28
CONTEMPT OF COURT—What is, sec. 275.....	91
CONTRACT—Breach of.....	2
What actions on are subject to jurisdiction, sec. 70 (b).....	1-2
When for payment in labor or in kind, judgment may be for	
payment of money, sec. 71.....	32
Relief against penalties and forfeitures in, sec. 73.....	32
Where by, money payable out of the province, sec. 85.....	34
Where debt made payable by in the province, sec. 86.....	34
CONVICTION—For offences under Act, sec. 283.....	94
CORPORATION—(foreign).	
When head office out of province, sec. 84.....	34
Service of process on, sec. 101.....	35
Liability of to garnishee, sec. 185.....	65-6
CORRESPONDENCE—With the inspector's dept.....	101
No. of official communication should be given in.....	101
Submitting hypothetical questions in.....	102

	PAGE.
COSTS—Clerk to tax, subject to revision of judge, sec. 46.....	14
Fee for making out statement of.....	125
To be paid clerks and bailiffs in advance, sec. 55.....	291
Of witnesses.....	125
Clerk shall certify costs in transferred cases, sec. 87.....	34
Where defence only applies to part, sec. 111.....	39
Rule as to, on tender and payment into court, sec. 124.....	43
Of commission to take evidence, sec. 141.....	46
In appeal as between party and party, sec. 153.....	51
When garnishee not liable for, sec. 191.....	69
Of proceedings on judgment summons, sec. 238.....	88
In actions against clerk and bailiff, sec. 292.....	97
In suits not exceeding \$10.....	118
Postages of papers, etc., to be costs in the cause, sec. 102.....	100
Charges for.....	125
Judge's authority as to, sec. 207.....	73
Where claim disputed and deft. afterwards confesses judgment, sec. 209.....	74
Not allowed without order of judge, sec. 210.....	74
<i>Counsel</i> —Judge may exclude, sec. 171.....	58
<i>Counsel Fee</i> —May be allowed in contested cases for over \$100, sec. 208.....	73
Clerk's fee for making out bill of.....	125
Duty of clerk as to.....	125
On returning process from foreign court.....	125
COUNTERCLAIM—Powers of court as to, sec. 73.....	32
Where it involves matter beyond the jurisdiction, sec. 74.....	32
Defendant to give notice of, sec. 128.....	44
Fee for entering defence of.....	120
COUNTY—The word includes two or more counties, sec. 2.....	3
Senior.....	8
Allowance to, for use of court-house, sec. 11.....	
Separation of junior from senior county, sec. 15.....	8
COUNTY CROWN ATTORNEY—Becomes clerk when office vacant, sec. 50.....	10
Books, etc., become his property.....	10
To pay fees forfeited by bailiff to Provincial Treasurer (Rule 183).....	99
May renew executions, sec. 221.....	79
To pay over fines to provincial treasurer.....	97
To pay unclaimed moneys to provincial treasurer, sec. 295.....	98
COUNTY BOARD—May alter limits etc.....	3
COUNTY JUDGES—Board of.....	99
Appointment of.....	99
Inspector or member of.....	100
May make rules and alter tariff.....	100
COUNTY TOWN—Courts in.....	6
Shall be at least one court in, sec. 4.....	3
Sittings to be held in court-house, sec. 11.....	6
COUNTY TREASURER—To keep account of jury fund, sec. 170.....	58-9
Shall pay clerk amount of jury fees on certificate of judge, sec. 172.....	59
COURT—Meaning of.....	191

	PAGE.
COURT-HOUSE—Sittings in county town to be held in.....	6
Maintenance of, sec. 11.....	287
Court-Room—Municipality to furnish, sec. 10.....	5
Expenses for rent.....	5
Judge to apportion cost where more than one municipality in division, sub-sec. 3, sec. 10.....	287
COURTS—When established.....	1
Division Court Acts.....	1
Amending Acts.....	1
Consolidation of Acts.....	1
Enlarged jurisdiction of.....	1-2
Not courts of record, sec. 7.....	1
Judgments therein, sec. 7.....	1
Jurisdiction—Where they have jurisdiction, secs. 70, 71, 81 ..	
Where they have not.....	2-3
Personal actions under \$60.....	2
Where amount claimed is under \$100.....	2
Where amount claimed is \$200, ascertained.....	2
In actions of replevin.....	2
Where value of goods under \$60.....	2
No jurisdiction if title to land brought in question, sec. 69 ..	2
Nor in actions for gambling debts.....	2
Nor for spirituous or malt liquors drank in a tavern.....	2
Nor in actions on notes of hand given for same.....	2
Nor in actions for toll, custom or franchise.....	2
Nor in actions in which the validity of a bequest under, or limitation under any will or settlement is disputed.....	2
Nor in actions for libel, malicious prosecution, slander, seduc- tion, criminal conversation, or breach of promise.....	3
Nor in actions against a justice of the peace for anything done by him in the execution of his office.....	3
Number of in County—Not less than three nor more than twelve	3
Must be at least one in each city and county town.....	3
Altering number and limits of.....	3
County Board may alter limits of.....	3
May establish or cancel courts.....	3
In provisional judicial districts, sec. 13, sub-sec. 3.....	3
Location of clerk's office.....	3
Holding of.....	4
Sittings may be reduced.....	4
Must be held at least once in every six months.....	4
In provisional judicial districts.....	4
Lieutenant-Governor may make further regulations there..	4
Provisions of law in force in counties may apply to districts	4
Where stipendiary magistrates are judges, they may alter time and place of holding—subject to approval of Lieut- Governor in Council.....	4
Upon petition of municipal council where no court, judge may establish.....	4
But no business can be done until order of the Lieutenant- Governor in Council approving, sec. 14.....	5
Sittings of and clerk's office must be within the division...	5
In cities, where two courts, sittings may be held in either division.....	5
Clerks in cities may keep their offices in same division....	5
Sittings of the two Toronto courts.....	5

COURT—(*Continued*).

	PAGE.
Municipality to furnish court-room.....	5
Must not be in connection with hotel or tavern.....	5
When municipality fails to provide accommodation.....	5
Judge may hold in suitable place.....	5
Party furnishing same entitled to \$5 per day from municipality.....	5
In county towns, sittings in the court-house.....	6
May be adjourned, in absence of judge, by clerk.....	6
Cannot be held on legal holidays.....	6
List of, with names of clerks and bailiffs.....	129-138
Limits of divisions of.....	148
COVENANT—Action on.....	2-12
Information as to.....	9
Of clerks and bailiffs, sec. 35.....	
Application for forms of to be made to inspector.....	12
To be given in such sums as the county judge directs.....	11
To be available to suitors, sec. 37.....	12
Certified copy to be received as evidence, sec. 38.....	13
Entries in books kept by clerk and bailiff evidence against sureties, sec. 39.....	13
What the words "clerk or bailiff" shall include, sub-sec. 2, sec. 39.....	8
If surety dies, etc., sec. 40.....	13
New surety to be given within one month, sec. 40.....	13
Forfeiture of office penalty of neglect.....	13
Procedure where sureties wish to discontinue, sec. 41.....	14-15
Application of the Act respecting public offices, sec. 42.....	14
Parties to former covenant not discharged from liability before renewal, sec. 43.....	11-14
To give names, etc., of sureties to inspector, sec. 64.....	11
To inform inspector as to change of sureties, sec. 65.....	11
To obtain certificate of clerk of the peace of filing, sec. 66.....	12
Actions on.....	12
Actions on, not exceeding \$100, sec. 70 (b).....	19
CREDITORS' RELIEF ACT—Right of bailiff to fees, where he has seized and deft. makes an assignment, sec. 56 (a).....	114-115
When the sheriff takes possession of goods seized, costs of bailiff shall be a first charge, sec. 212 (b).....	75
CROSS JUDGMENTS—May be set off, sec. 213.....	76
Proceedings thereon.....	76
CUSTODY OF GOODS—Seized under attachment, shall remain with bailiff, sec. 258.....	116
Where seized by county constable shall be handed over to bailiff, sub-sec. 2, of sec. 258.....	116

D.

DAMAGES—Action for on covenant, sec. 38.....	12
Claims for in personal action, not to exceed \$60, sec. 70, and sub-secs.....	2
In action on replevin bond (<i>See Replevin</i>).....	
Unliquidated, relief against, sec. 73.....	32
For negligence of bailiff, secs. 279-280.....	93
For distress, under defective process, sec. 289.....	96

	PAGE.
DEBT ACCOUNT—Action on.....	2
Debt or money demand, sec. 109.....	38
Proceedings to garnish, sec. 73.....	24
Jurisdiction in actions, sec. 69.....	1-2
Confession of, sec. 205.....	72
Debt attachment book, sec.....	16
Imprisonment for does not extinguish, sec. 247.....	91
DECISION—Shall be according to equity and good conscience, sec. 70.....	19
To be final and conclusive, subject to right of appeal.....	19
Judge's, when it may be given, sec. 144.....	47
In appealable cases, secs. 151-152.....	48-9
DEFAULT—Judgment by, sec. 109.....	38
Where defendant does not appear, sec. 110, 117.....	38
DEFENCE—No fee for entering.....	112-121
Legal or equitable, sec. 73.....	32
Of counterclaim, sec. 74.....	32
Notice of, sec. 109-111.....	38
Setting up, on motion for speedy judgment, sec. 111.....	39
Leave to enter, sub-sec. 6, sec. 111.....	39
May be allowed any time before judgment, sec. 112.....	39
Notice in such case.....	39
Withdrawal of notice, sec. 113.....	40
Notice required under sec. 113 (a).....	40
Payment into court operates as notice of, sec. 126.....	43
In garnishee proceedings, sec. 188.....	64
As to set off secs. 129-130.....	47
DEFENDANT—Meaning of.....	190
May plead not guilty.....	97
DEPUTY BAILIFF—Assistants of bailiffs not deputies.....	9
Appointment and removal of, sec. 32.....	10
DEPUTY CLERK—Assistants of clerks not deputies.....	9
Appointment and removal of, sec. 33.....	10
DEPUTY JUDGE—Court may be presided over by, sec. 21.....	7
Who may be appointed, sec. 22.....	7
Notice of appointment, sec. 23.....	7
Duration of appointment, sec. 24.....	7
If Lieutenant-Governor disapproves, he may annul, sec. 24.....	7
DISCHARGE—Of garnishee, sec. 190.....	68-9
Of debt from attachment, sec. 195.....	69
DISPOSAL—Of fines.....	97
Of moneys paid into court.....	97
DISPUTING PLAINTIFF'S CLAIM—Notice of, sec. 109.....	38
Leave to dispute, sec. 112.....	39
Disputing jurisdiction in garnishee cases, sec. 176.....	61
DISTRIBUTION—Of moneys realized in attachment proceedings, sec. 256.....	197
DISTRICT JUDGE—Member of board to alter divisions, etc.....	3
DIVIDING CAUSE OF ACTION—Shall not be divided for the purpose of bringing same within the jurisdiction of the court, secs. 77-255.....	32
DISCONTINUANCE OF ACTION.....	123
Where withdrawn.....	123

	PAGE.
DIVISION COURTS—Supplanted Court of Requests.....	1
Amendments to Act.....	1
Are not Courts of Record.....	1
Where they have jurisdiction.....	1-2
Where they have not.....	2-3
(See <i>Courts</i> .)	
Limits of divisions of.....	148
DUFFERIN—Courts and clerks in.....	130
Bailiffs.....	139
Limits of divisions.....	152

E.

ELGIN—Courts and clerks in.....	130
Bailiffs.....	139
Limits of Divisions.....	152
EMOLUMENTS—Of clerks.....	29, 30-31
ENTRIES IN BOOKS—How they should be made.....	17
In separate book to be kept by clerks in cities.....	17
EQUITY OF REDEMPTION—Of debtor liable to seizure, sec. 227.....	81
ESSEX—Courts and clerks in.....	130
Bailiffs.....	139
Limits of divisions.....	152
EXAMINATION—Of judgment debtor, secs. 235-246.....	88-9
EXEMPTIONS—What are exempt.....	84-7
EXECUTION—Clerk to enter and keep record of, sec. 45.....	20
Bailiff must return within thirty days.....	27
When bailiff forfeits fees on, sec. 57.....	27
If bailiff unable to sell.....	28
Moneys realized.....	28
When clerk cannot renew.....	28
May issue forthwith, under sec. 109.....	38
Enforcement of against clerk or bailiff, secs. 89, 279, 281.....	35, 93-6
When required to be executed at a distance, sec. 103.....	10
Where no bailiff.....	10
Against one of several partners, sec. 106.....	35-6
When money not paid pursuant to order, sec. 212.....	75
Not to issue within 15 days after judgment, sec. 145.....	48
Unless otherwise ordered by the judge.....	48
Not to be postponed for more than fifty days, sec. 147.....	48
Must be executed within the county.....	76
What may be seized under, sec. 227.....	82
Where to be executed, sec. 214.....	76
If defendant removes to another county.....	76
Effect of payment of before sale, sec. 216.....	77
On transcript from another division, sec. 217.....	77
Clerk to notify plaintiff of return of <i>nulla bona</i> , sec. 218.....	78
May issue on revival of judgment, sec. 219.....	79
When dated and returnable, sec. 220.....	79
Renewal of by county attorney, sec. 221.....	79
Judge may order issue of before regular day, sec. 222.....	79
Execution against lands, directed to the sheriff, sec. 8.	
Amended Act. (57 Vic., c. 23.).....	80
On failure of sheriff to realize money on, sec. 212a.....	75

EXECUTION—(*Continued*).

PAGE.

Not to issue against garnishee until money due, sec. 194....	69
Return of.....	125
Of papers must be made promptly to entitle to fee.....	125
Duty of clerk.....	125
As to duties and fees of officers.....	125
EXECUTIVE OFFICERS—Bailiffs are executive officers of the courts....	11
EXECUTOR—Meaning of.....	190
EXPRESS COMPANY—Meaning of agent of.....	192
EXTORTION—Definition of, sec. 278.....	92
Penalty for.....	93
EVIDENCE—Certified copy of covenant to be, sec. 38.....	13
Entries in books of clerks and bailiffs to be, sec. 39.....	13
Entries in procedure book and certified copies, sec. 45.....	13
Power of inspector on enquiry, sec. 62.....	15
Inspector to take down.....	15
To be taken down by judge in appealable cases, sec. 115....	41
Judge's minutes evidence, sec. 116, 151.....	51
Of set off, sec. 129.....	44
Of witnesses unable to attend trial, sec. 137.....	46
Of witnesses residing at a distance, sec. 138.....	46
Of books of account, sec. 142.....	47

F.

FALSE RETURN—If made by bailiff, sec. 280.....	93
FEE BOOK—Of clerk.....	16
Of bailiff.....	17
FEES—Of clerk of the peace on filing covenant, sec. 36.....	12
Clerks and bailiffs to be paid by, sec. 53.....	103
Of appraisers (2) sec. 53.....	110
Table of to be hung up in clerk's office, (3).....	102
To be paid in advance, sec. 54.....	103
If not paid, how enforced, sec. 55.....	103
Bailiff's fees to be paid to clerk before execution issues, sec. 56	103
Right of bailiff to, when action settled, 56 <i>a</i>	103
Bailiff to forfeit, if he neglects to return writ, rule 183....	99
Forfeited, disposal of.....	99
Only those provided by tariff to be taken, sec. 47.....	102
Proportion to be retained by clerk, sec. 59.....	30-31
Inspector to see that only lawful fees are taxed, sec. 61, sub- sec. 4.....	14
Postages to be costs in the cause, sec. 102, Rule 300.....	100-101
Payable on requisition for jury, sec. 156.....	52
For jury fund, sec. 170.....	59
Of jurors, sec. 171, 172.....	60
Of bailiff, when goods seized are taken by sheriff, sec. 212 <i>b</i> ..	75
Liability of clerk to bailiff for.....	103
In replevin and interpleader.....	111
FEES TO CLERK—Remarks on items of and changes in tariff....	112-114
For entering defence.....	112
For furnishing copies of papers.....	112
Certifying under seal.....	112
Entering judgment or final order.....	113-121
Subpœna to witness.....	113

FEES TO CLERK—(<i>Continued</i>).	PAGE.
Summons and copy for jury.....	113
Calling jury ordered by judge.....	113
Transcript.....	113
Bond.....	114
Taxing costs—making out statement of.....	114
Taxing bailiff's costs.....	114
FEES TO BAILIFF—Remarks on items of and changes in tariff.....	114-117
For calling parties on hearing of judgment summons.....	114
Under the Creditor's Relief Act.....	115
For mileage.....	115
When entitled to for trying to find property.....	115
Reasonable allowances and disbursements.....	116
Poundage.....	117
FEES TO WITNESSES—Remarks on.....	117-118
To appraisers.....	118
In suits not exceeding \$10.....	118-119
How entries should be made.....	119
Fees, where case settled.....	122
FEES—On distress for rent, sec. 271.....	
Of witnesses, sec. 134.....	45
To be taxed by clerk, sec. 46.....	14
Fees on transcripts.....	123
FINES—Clerk to keep account of, sec. 46.....	16
To furnish county attorney with verified account of, sec. 48.....	32
How to be paid over by him, sec. 295.....	98
May be enforced by order of judge, sec. 282.....	91
May be enforced by justices of the peace, sec. 283.....	91
Disposal of, sec. 293.....	97
FIRST PROCESS—How called.....	20
FLOODING LAND.....	21
FOLIO—What constitutes.....	121
FOREIGN CORPORATION—Action against, sec. 84.....	34
Service of process on, sec. 101.....	35
Of garnishee summons, sec. 182.....	64
FOREIGN COURT—Foreign Division—Meaning of.....	190
FOREIGN SERVICE—How performed.....	35
FORMS—See index to forms at end of volume.....	
FRONTENAC—Courts and clerks in.....	130
Bailiffs.....	139
Limits of divisions.....	153
FUTURE DAYS—No fee for adding or additional warnings.....	120

G

GAMBLING DEBT—Actions for.....	2
No jurisdiction in action for, sec. 69.....	2
GAOLER—Duty of as to prisoner, secs. 243-244.....	90
GARNISHMENT—Summons to garnishee.....	24
Service of.....	24
Where separate interests.....	24
Substitutional service, sec. 100.....	24
Appeal in, sec. 148.....	50
Proceedings to garnish debts, sec. 173.....	60

GARNISHMENT—(*Continued*).

	PAGE.
Proceedings against non-resident garnishees, sec. 178.....	63
Wages or salary exempt to the extent of \$25, sec. 174.....	61
Where exemption not allowed, sec. 175.....	61
Notice where jurisdiction disputed, sec. 176.....	61
Memorandum on garnishee summons, sec. 177.....	62
If alleged to be due by an unmarried person having no family, sub-sec. (2).....	62
Where the creditor's claim a judgment, sec. 178.....	63
Service of order to bind all parties, sec. 179.....	63
Garnishee may pay his own discharge, sec. 179.....	63
Payment to any but primary creditor void, sec. 180.....	64
Payment into court will protect.....	64
Primary creditor may summon garnishee, sec. 181.....	64
Service on foreign corporation, sec. 182.....	64
Mode of service of summons and memorandum, sec. 183.....	65
Judgment at hearing, sec. 184.....	65
Where primary creditors claim not a judgment, sec. 185.....	65
If garnishee a body corporate, sec. 186.....	66
Who to be deemed agent, sub-sec. (3),.....	66
Service on companies, sec. 186.....	66
Judge may dispense with.....	66
Judgment in such cases, sec. 187.....	66
Garnishee may be examined as a judgment debtor.....	67
All parties interested may show cause, sec. 188.....	67
Defence in, sub-sec. (2) sec. 188.....	67
Costs to be costs in the cause, sub-sec. (3).....	68
Service of summons on garnishee to bind debt, sec. 189.....	68
If judgment for primary creditor, sec. 190.....	68
Payment in such case.....	69
As to costs, sec. 191.....	69
Costs of primary creditor, sec. 192.....	69
Requisites before judgment given, sec. 193.....	69
Execution only so far as money due, sec. 194.....	69
Application to discharge debt from attachment, sec. 195.....	69
Security for primary creditor, sec. 196.....	70
Terms of bond, sec. 196.....	70
Adverse claims, sec. 197.....	70
Judge may postpone or adjourn, sec. 198.....	70
Debt attachment book and entries therein, sec. 199.....	71
GENERAL DIRECTIONS—As to entering actions.....	34
GENERAL INFORMATION.....	120-8
GENERAL RULES—Authority of board of county judges to frame, etc., sec. 297.....	
Proceedings of board, secs. 298-303.....	99-100
Expenses provided for, sec. 304.....	
GENERAL SESSIONS—Notice and proclamation by, before alteration of divisions, sec. 13.....	3-8
GOODS, CHATTELS AND PROPERTY—Meaning of.....	191
GROSS AND NET INCOME—Of clerks, how arrived at.....	30
GUARANTEE COMPANY—Security of may be accepted.....	11
Renewal receipt of to be filed.....	12
GREY—Courts and clerks in.....	130
Bailiffs.....	140
Limits of divisions.....	154

H.

	PAGE.
HALDIMAND—Courts and clerks	130
Bailiffs	140
Limits of divisions	155
HALIBURTON—Courts and clerks in	131
Bailiffs	140
Limits of divisions	156
HALTON—Courts and clerks in	131
Bailiffs	140
Limits of divisions	156
HASTINGS—Courts and clerks in	131
Bailiffs	140
Limits of divisions	157
HOLIDAYS—Days included in	7
HOME COURT—Home Division—Meaning of	190
HURON—Courts and clerks in	131
Bailiffs	141
Limits of divisions	158

I.

IMMEDIATE EXECUTION—Judge may order, sec. 222	79
IMPRISONMENT—Of debtor under warrant, secs. 243-244	90
INCOME—Gross and net	30
INDEX to rules (<i>See end of vol.</i>)	
Index to forms (<i>See end of vol.</i>)	
INFANT—May sue for wages, sec. 76	298
INJUNCTION—Powers of court to grant, sec. 73.	32
INSPECTOR—Appointment of, sec. 61	14
Holds office during pleasure	14
Duties, secs. 61, 62	14
Member of board to alter number and limits of court, sec. 13	3
On separation of senior and junior counties to act, sec. 15. ...	8
To receive from clerk of the peace record of alterations, etc., of divisions, sec. 20	8
On report of, clerks and bailiffs may be dismissed, sec. 30. ...	10
May grant leave of absence to clerk or bailiff, sec. 32.	9
And approve of appointment of deputy	9
Books of clerks and bailiffs to be produced to for inspection, sec. 63	15
Clerks and bailiffs to report to	15
To be informed of appointment of, sec. 64	9
To be informed of new sureties, sec. 65	11
May require officers to produce certificate of filing covenant, sec. 66	12
Annual returns to be made to, sec. 67	
Member of board of county judges	15
May prosecute parties wrongfully holding books, etc.	15
INTERPLEADER—When summons issued	2
At option of bailiff	2
Actions where the money claimed or the value of goods does not exceed \$60, sec. 148 and sub-sec.	50
Right to a jury, sec. 155	52-53

INTERPLEADER—(*Continued*).

PAGE.

Parties to give notice to clerk and pay deposit, sec. 156....	52
Costs of summoning jury.....	52
Proceedings thereon, secs. 157-158.....	55
Claims of landlord, sec. 268.....	198
How adjusted, sec. 269.....	199
In case bailiff has more than one execution, sec. 269, sub-sec. 4	200
As to damages and costs, sub-secs. 5 and 6.....	200
As to rents due, sec. 270.....	200
Duty of bailiff to ascertain value of goods.....	120
INTERROGATORIES—Should be annexed to commission.....	46
Items of tariff discussed.....	111-124

J.

JUDGE—Meaning of.....	190
Presides at county board.....	3
Altering limits.....	3
Does not now locate clerk's office.....	3
Holding courts.....	4
Application to Lieut.-Governor as to sittings.....	4
Stipendiary magistrates, judges in territorial districts.....	4
District judge.....	4
They may alter times and places of meeting.....	4
Junior judge.....	6
Appointment of not to excuse senior judge from holding courts.....	6
Deputy judge.....	7
Sittings in cities.....	5
Where accommodation not provided for holding courts.....	5
Powers of judge.....	5
His right to hold sittings in courthouse in county towns.....	6
In absence of through illness, etc.....	7
Liability of.....	6
May appoint additional sittings.....	5
Lieutenant-Governor to be notified of appointment of deputy, sec. 23.....	7
Duration of appointment, sec. 25.....	7
Chairman of board to alter limits, etc.....	3
In provisional judicial districts.....	3
Holding court by.....	4
Regulation of sittings.....	4
May establish court upon petition of municipal council.....	4-5
Liability of.....	6
Powers and duties of.....	6
May appoint deputy.....	7
Lieutenant-Governor may cancel appointment of deputy.....	7
In the absence of, clerk may adjourn court, sec. 25.....	6
May suspend or remove clerk or bailiff appointed by judge, sec. 29.....	10
May approve of appointment of deputy by clerk.....	9
Responsibility of "judicial" in approving of covenants.....	11
May for cause suspend clerk or bailiff.....	10
To report same to provincial secretary.....	10
To fix amount and approve of security of officers, sec. 35.....	11
To notify officers when new sureties required, sec. 40.....	13
To be notified by surety intending to withdraw, sec. 41.....	13
To suspend and report officer, if security not completed within time, sec. 41.....	13

JUDGE—(Continued).

	PAGE.
To revise taxation of costs, sec. 46, and Rule 295.....	271
To have access to accounts of fines and suitors' moneys, sec. 46.....	16
To be furnished with account of, sec. 48.....	17
To make orders agreeable to equity and good conscience, sec. 70, sub-sec. (c).....	32
To make order for payment of money although contract for payment in kind, sec. 71.....	32
May sue or be sued in adjoining county, sec. 90.....	35
May order substitutional service, sec. 100.....	24
Where judge certifies partnership transaction, sec. 107.....	36
May add parties, sec. 108.....	37
May order statement of names of partners, sub-sec. 4.....	37
May set aside judgment by default, sub-sec. 3, sec. 109.....	37-38
May order speedy judgment, sec. 111.....	38-39
May suspend execution and order payment into court, sub-sec. 4, sec. 111.....	39
May enter judgment against one defendant and allow another to defend, sub-sec. 5.....	39-40
May grant leave to defend unconditionally, sub-sec. 6.....	39-40
May give leave to dispute a claim at any time before judgment, sec. 112.....	39
To summarily dispose of cause, or non-suit plaintiff, sec. 114.....	40-41
To note agreement not to appeal in his minutes, sec. 116.....	41
In case defendant does not appear, sec. 117.....	42
Discretion of.....	42
May adjourn hearing, sec. 118.....	42
May postpone or adjourn, sec. 119.....	42
May issue order for commission, sec. 135.....	45-46
May prevent agent from acting at the hearing, sec. 121.....	42
May postpone judgment, sec. 144.....	47
May direct time and proportions in which judgment is to be paid.....	48
May grant new trial, sec. 145.....	48
May give judgment on application for, sec. 146.....	48
May postpone execution, sec. 147.....	49
Appeal from decision of, sec. 148.....	50
May grant stay on appeal, sec. 149.....	50
Security as he may direct, sub-sec. (1).....	50
If by a sum of money, to remain in court as security for money and costs, sub-sec. (2).....	50
May fine clerk of municipality for neglect to furnish copy of voters' list, sec. 164, 165.....	57
Causes for hearing by, sec. 166.....	57
May call <i>tales</i> , sec. 167.....	57
May order jury to be empanelled to try disputed fact, sec. 168.....	58
May discharge jury not agreeing, etc., sec. 169.....	58
Power in garnishee proceedings, sec. 198.....	70
May order arbitration, sec. 200.....	71
May set aside award, sec. 203.....	72
Authority as to costs, sec. 207.....	72-3
Power over costs where pltf. fails for want of jurisdiction, sub-sec. 2, sec. 207.....	73
May allow counsel fee, sec. 208.....	73
Power to award damages in interpleader, sec. 269, sub-sec. 5.....	200
May fine or commit for contempt of court, sec. 275.....	91
May adjudicate upon complaints against officers, sec. 277...	92

	PAGE.
JUDGE'S LIST AND JURY LIST—Causes to be set down on separate lists, sec. 166.....	57
Jury list to be first disposed of sec. 166.....	57
JUDGMENT—Meaning of.....	191
To have the same force and effect as in courts of record, sec. 7.....	1
When money not paid pursuant to order, sec. 212.....	74
Clerk to keep record of, sec. 45.....	16
To register same, sec. 46.....	16
Shall be in full discharge for the balance of an account, sec. 78.....	33
Against clerks and bailiffs, how enforced, sec. 89.....	35
Against one of several partners or joint debtors, sec. 106....	37
Bailiff may seize property of firm on certificate of judge, sec. 107.....	38
Entering in proceedings by special summons.....	38
By default where specially endorsed summons, sec. 109.....	38
Motion for speedy, sec. 111.....	39
Caution to clerks on entering.....	38-39
May be entered by consent on withdrawal of defence, sec. 113.....	40
At trial to be given by judge, sec. 114.....	40-41
When subject to appeal, sec. 116, 148.....	41-49
When debt. does not appear, sec. 117.....	42
May be given instanter or postponed, sec. 144.....	47
Postponed may be sent to clerk, amendment to sec. 144.....	47
Fee for entering.....	121
Judge may direct times and proportions of payment, sec. 145.....	48
May be paid by instalments.....	48
Execution on not to be postponed for more than 50 days, sec. 147.....	49
When money not paid pursuant to order, sec. 212.....	74
May be given on application for new trials and on appeals, sec. 146.....	48
In garnishee proceedings against corporation summons shall issue from division in which judgment recovered, sec. 182.....	64
At hearing, sec. 184.....	65
Where primary creditor's claim not a, sec. 185.....	65
In the event of the garnishee being a body corporate.....	66
In garnishee proceedings, sec. 187.....	66-67
Not to be given until summons and memorandum with proof of service filed, sec. 193.....	69
Execution to be stayed until debt due, sec. 194.....	69
On award of arbitrator, sec. 202.....	71
Costs in actions on, sec. 210.....	74
Not to be set aside for matter of form, sec. 211.....	74
Transcript of, sec. 217.....	77
Revival of, sec. 219, R. 139.....	79
Where excess over \$100 abandoned, sec. 255, and Rule 7....	19
In action for negligence against bailiff, sec. 280.....	94
Cross judgments, sec. 213.....	76
By default where final judgment not entered, sec. 110.....	38
Motion for, sec. 111.....	39
JUDGMENT DEBTOR—Examination of, sec. 235.....	88
Summons may issue for.....	88
May take place at hearing, sec. 246.....	90
Judgment debtor's book.....	17

	PAGE.
JUDGMENT DEBTOR—Constables to execute warrant, sec. 243.....	90
How discharge from custody may be obtained, sec. 244.....	89
When debt. personally served, judge may examine, sec. 246.	90
Order may be made as in case of judgment summons.....	90
Annual return to be made by made by clerks of commit- ments, sec. 248	31
JUDGMENT SUMMONS—Affidavit for, sec. 235	88
Shall be served personally.....	88
Examination of witnesses, sec. 236.....	88
Place of, sec. 237.....	88
Costs of, sec. 238.....	88
Party examined and discharged not to be again summoned, sec. 239.....	88
Exception	88
Consequences of neglect or refusal to attend, sec. 241	89
Garnishee may be examined as.....	67
Only cases in which debtor may be committed, sec. 241....	89
Commitment, sec. 242.....	89
Costs may be allowed debtor in certain cases, sec. 241.....	89
May order payment of whole debt or by instalments, sec. 249	89
Judge may alter or modify, sec. 245.....	90
Debt not to be extinguished by imprisonment, sec. 247.....	91
JUDICIAL DISTRICTS—Alteration, etc., of limits.....	3
JURISDICTION—Where courts have.....	2
Where they have not (<i>See courts</i>).....	2-3
Account beyond.....	33
When action is tried in another court.....	33
JURORS—Who may be, sec. 157	55
How selected, sec. 158.....	55
Costs of summoning.....	52-53
Voters' lists to show persons qualified	55
Clerk of municipality to furnish copy, sec. 159.....	55-56
Summoning jurors, sec. 160.....	56
Service of.....	56
Fee for summoning.....	122
Parties entitled to challenge, sec. 161.....	56
Penalty for disobeying summons, sec. 162.....	56
Service does not exempt from serving in courts of record, sec. 163.....	56
Exemption from serving.....	57
Proceeding against municipal clerk for neglecting to furnish voters' list, sec. 164	57
Judge may fine municipal clerk for breach of duty, sec. 165.	57
Separate lists to be made out, sec. 166.....	57
Judge's, jury list	57
Five jurors to be empanelled, sec. 167.....	57
Judge may call tales.....	58
Verdict shall be unanimous.....	58
Judge may order jury to be empanelled to try disputed fact, sec. 168.....	58
Each juror to be paid 10c., to be taxed as costs in the cause	58
Fees to jurors, sec. 172	60
Conditions entitling to, sec. 172.....	60
Unless legally demanded judge to try question of law and fact, sec. 70 (c)	52

JURORS—(<i>Continued</i>).	PAGE.
Postponement of trial in case tried by, sec. 119.....	53
When a jury may be required, sec. 154.....	52
Notice and deposit required, sec. 156.....	53
Right to in interpleader, sub-sec. 2, sec. 155.....	52
Summoning and selecting, sec. 158..	54-55
Fees for jury fund, sec. 170.....	58
How and to whom payable, sec. 172.....	60
Return of ..	60
Returns in cities forming separate divisions, sec. 171.....	60
JURY FUND—Returns of ..	31
JUSTICES OF THE PEACE—Actions against will not lie if objected to,	
R.S.O., 1887, cap. 47, s. 53.....	3
May take affidavit and issue warrant of attachment, sec. 250	197-285
Proceedings thereunder, sec. 251.....	285
No fees allowed for issuing attachment.....	286
How fines enforced, sec. 283	94
Conviction, sec. 284.....	94
K.	
KENT—Courts and clerks in.....	131
Bailiffs.....	141
Limits of divisions.....	160
L.	
LAMBTON—Courts and clerks in.....	132
Bailiffs.....	141
Limits of courts.....	161
LANARK—Courts and clerks in.....	132
Bailiffs.....	141
Limits of courts.....	162
LEEDS AND GRENVILLE—Clerks and courts in.....	132
Bailiffs.....	142
Limits of divisions..	162
LENNOX AND ADDINGTON—Courts and clerks in.....	132
Bailiffs	142
Limits of divisions ..	164
LAND--No jurisdiction in action for recovery of.....	2
LANDLORD—(<i>See Interpleader</i>) (<i>Replevin</i>)	202
Meaning of, sec. 268.....	203
Meaning of "agent" sec. (2).....	203
Claims of, how to be adjusted, sec. 269.	203
Claims for rent, sec. 270....	203
How bailiff is to proceed, sec. 271.....	203
Goods liable to distress.	203
Fees of bailiff, sec. 272.....	203
If replevin made, sec. 273	203
When claim is to be first paid, sec. 274.....	204-5
LEGAL HOLIDAYS—Courts cannot be held on.....	7
Clerk may adjourn over.....	7
LIEN—Of bailiff for fees, sec. 56 (<i>a</i>).....	71
Solicitor's, for costs.....	292

	PAGE.
LIEUTENANT-GOVERNOR—Approval of required for clerk's offices in same division in cities, sec. 9.....	5
May regulate holding of courts in certain cases, sec. 12.	4
May designate and appoint place for clerk's office in the division, sec. 9, 57 Vict., chap. 23.....	3
In council to approve of courts established, sec. 14.....	4-5
To be notified of appointment of deputy judge, sec. 23.....	7
May annul appointment, sec. 24.....	7
May appoint, during pleasure, clerks and bailiffs, sec. 27....	8-10
Dismissal of, sec. 30.....	10
To appoint inspector, sec. 61.....	14
To direct him as to security of officers.....	14
To be informed on all matters by inspector's report, sec. 61	15
May appoint board of county judges.....	99
May appoint retired county judge to be a member.	99
LIMITATION OF ACTION—For things done under this Act, sec. 290....	96
LIMITS OF COURTS—Existing when Act takes effect, sec. 3.....	3
Continue until altered.....	3
Alterations of, sec. 13.....	3
On separation of junior from senior county, sec. 15.....	8
Regulation of, on separation, sec. 10 (<i>See Division Courts</i>)..	
LINCOLN—Courts and clerks in.....	132
Bailiffs.....	142
Limits of divisions.....	164
LIQUIDATED DAMAGES—Power of court to grant relief, sec. 73.....	32
LIQUORS—No jurisdiction in action for spirituous or malt.....	2
LISTING CASES FOR TRIAL—Suits transferred to be placed on, sec. 87	34
Order in which actions to be placed, sec. 115.....	41
M.	
MANITOULIN—Courts and clerks in.....	133
Bailiffs.....	142
Limits of divisions.....	165
MAINTENANCE OF COURTHOUSE—Use of for sittings of court, sec. 11..	6
MALICIOUS PROSECUTION—No jurisdiction in action for.....	3
MIDDLESEX—Courts and clerks in.....	133
Bailiffs.....	142
Limits of divisions.....	165
MILEAGE—Not allowed bailiffs out of county, sec. 57.....	27
MINORS—May sue for wages, sec. 83, Rule 234.....	255
MISCELLANEOUS NOTES.....	286-300
MISCONDUCT—Of clerks or bailiffs, what is, sec. 277.....	92
MONEY IN COURT—May be paid in before trial.....	43
Not to be paid out until suit determined.....	43
Costs may be paid out of.....	43
Notice of.....	43
Account of by clerk, secs. 46, 47, 48, 49.....	16-97
Notice of.....	97
MONEY COLLECTED—Punishment for wrongfully withholding, sec. 50	92
To be returned by bailiff, sec. 104.....	28
Clerk to mail notice of payment, sec. 294.....	98
Unclaimed, how disposed of.....	98

	PAGE.
MONEY DEMAND—Action on	2
MORTGAGE—Interest of mortgagor in goods liable to seizure, sec. 227	81-82
Such sale conveys interest to purchasers.....	82
MUNICIPALITIES—Required to provide court accommodation, sec. 10	5
Must not be in connection with a hotel or tavern.....	5
Failing to do so, judge may hold court in any suitable place, sub-sec. (2).....	5
Must pay party furnishing accommodation \$5 per day.....	5
Judge to apportion cost between municipalities, sub-sec. (3)	6
Establishment of court on petition of, sec. 14.....	4-5
Duties of clerk of, secs. 159, 165.....	56-57
MUSKOKA—Courts and clerks in	133
Bailiffs	143
Limits of divisions.....	167

N.

NEGLECT—Of bailiffs, sec. 279.....	93
Action against for, sec. 280.....	93
Judgment and execution in such case, sec. 281	94
NET INCOME—Of clerks—what is	30
NEW TRIAL—On application for	48
Judgment on application for and on appeals, sec. 146.....	48
Except in cases where new trial granted, execution not to be postponed for more than 50 days.....	48
Appeals lies, sec. 148.....	48-49
NIPISSING—Courts and clerks in.....	133
Bailiffs	144
Limits of divisions.....	168
NON-RESIDENTS—Summons against	22
Actions against	36
NONSUIT—Judge may nonsuit pltf., sec. 114.....	40
Plaintiff may insist on—before verdict in jury cases, sec. 114	41
And before judgment pronounced in other cases, sec. 114....	41
NOT GUILTY—Deft. may plead	97
NORFOLK—Courts and clerks in.....;	133
Bailiffs.....	143
Limits and divisions.....	168
NORTHUMBERLAND AND DURHAM—Courts and clerks in	133
Bailiffs.....	143
Limits of divisions.....	169
NOTARY PUBLIC—Affidavit may be sworn before, sec. 143	47
NOTICES—Must be in writing.....	35
Of appointment of deputy judge, sec. 23.....	7
When action transferred or entered in wrong division, sec. 87	34
Required under, sec. 113 (a).....	40
Of tender and payment into court, sec. 123.....	42-43
Notice of payment to pltf., sec. 126	43
Notice of withdrawal of defence, sec. 113.....	40
Clerk required to give all notices of which pltf. should be informed, sec. 113(a).....	40
And notice showing time and place of sittings of court in all cases.....	40

NOTICES—(Continued).

	PAGE.
Set off, notice of to be given by deft., sec. 128.....	44
Requiring jury, secs. 155-156.....	49
Right of persons thereto in proceedings affecting their interests, secs. 182-183....	64-65.
Fees for.....	121
NOTICE OF ACTION	193.
Of return of <i>nulla bona</i> , sec. 218	78
To be given to parties acting in pursuance of Act, sec. 290..	96
NOTICE OF ALTERATION OF DIVISIONS—Notice and proclamation at sessions of the peace, sec. 13 and 14.....	3
Judge shall cause sheriff, warden and inspector to be notified sub-sec. 2, sec. 13.....	3
Public notice must be given and proclamation made in open court.....	3
No resolution or order can be made without, sec. 19.....	8
NOTICE OF DISPUTING CLAIM—When to be entered, sec. 109.....	38.
When leave to dispute is given, sec. 112.....	39.
Of withdrawal of defence, sec. 113	40.
Payment into court operates as, sec. 123.....	43.
NOTICE DISPUTING JURISDICTION—Where jurisdiction disputed by garnishee, sec. 176.....	61
NOTICE OF MOTION—For speedy judgment, sec. 111.....	39.
NOTICE OF SALE—Of goods under execution, sec. 232.....	83
Of sale of perishable goods, sec. 263.....	197
NOTES OF EVIDENCE—To be taken in writing in appealable cases, sec. 115.....	41
Notes of judge's charge to be filed with evidence, sec. 151....	51
NOT GUILTY—Plea of, in actions against clerk and bailiff, secs. 287, 288.....	96
Effect of, sec. 291	97
NULLA BONA—Return of, sec. 223	81
Notice to be given by clerk, sec. 218.....	78
NUMBERING OF COURTS—In counties, cities and towns, sec. 5.....	3
Alterations in, sec. 13	3
NUMBERING OF PROCESS—Particulars of claim to be numbered, sec. 94	35
Summons to bear number of claim, sec. 94	35.

O.

OATH—Meaning of.....	190.
Verifying returns, sec. 68	31
Administered to witnes and persons in court, sec. 133.....	45
Penalty for refusal to be sworn, etc., sec. 133.....	45
Commissioner to administer, sec. 138	46
Arbitrator may administer, sec. 204.....	72
On examination of judgment debtor, sec. 236.....	88
OFFENCES AND PENALTIES—Contempt of court, sec. 275	91
Resisting and assaulting officers, sec. 276	91
Misconduct of clerks and bailiffs, sec. 277.....	92
Extortion, sec. 278	92
Negligence, sec. 279.....	93
How penalties enforced, sec. 282, 283.....	94.

	PAGE.
OFFICERS OF COURT—(<i>See clerks and bailiffs</i>).....	
For every court.....	8
Where actions are brought against.....	19
May be compelled to give evidence before inspector, sec. 62	15
Protection of, sec. 285.....	95
Demand of perusal and copy of warrant to be made on before action against, sec. 285.....	95
Bailiff entitled to verdict on production of warrant, sec. 286	95
Not to be a trespasser on account of any irregularity, sec. 289	96
Action against shall be commenced within 6 months, sec. 290	96
Tender of amends, etc., sec. 291.....	97
Pltff. not to have costs against where verdict not over \$10, sec. 292.....	97
Payment may be made into court with costs, sec. 125.....	43
Flea of tender and payment into court, sec. 122.....	42
Bailiffs executive officers.....	11
Act respecting public.....	14
OFFICES—Of clerks in cities where two courts in same division, sec. 9	5
ONTARIO—Courts and clerks.....	134
Bailiffs.....	143
Limits of division.....	170
ORDER—Meaning of.....	191
ORDERS OF COURT—Clerk to keep record of, sec. 45.....	16
To be registered by, sec. 46.....	16
For commitment of persons wrongfully holding books, sec. 50	15
To be served by bailiff, sec. 51.....	27
For enforcing payment of fees, sec. 56.....	103
Not to be set aside for matters of form, sec. 211.....	74
ORDER IN WHICH SUITS ARE TO BE TRIED—Actions transferred, sec. 87	34
Over \$100, sec. 115.....	41
ORDER BOOK—Entries therein.....	17
ORDINARY SUMMONS—When issued.....	20
OUT OF PROVINCE—When debt made payable.....	34
OXFORD—Courts and clerks in.....	134
Bailiffs.....	144
Limits of divisions.....	170
P	
PARRY SOUND—Courts and clerks in.....	134
Bailiffs.....	144
Limits of divisions.....	171
PARTICULARS OF CLAIM—(<i>See Claim.</i>)	
PARTIES—One of several partners may be sued, sec. 106.....	36
Judge may order addition of, sec. 108.....	36
PARTY—Meaning of.....	189
PARTNERS—Actions against.....	35-36
When resident in different divisions, sec. 106.....	35-36
Procedure.....	36
Bailiff may seize property of firm, sec. 107.....	36
Action may be brought in firm name, sec. 108.....	37
Names of all may be ordered to be furnished.....	37
Where execution may issue against.....	37

	PAGE.
PAIEMENTS—Questions concerning cannot be tried.....	2
PAYMENTS—Judge may order times and proportion of, sec. 145.....	48
On making, execution debtor to notify clerk, sec. 212.....	74
Effect of payment of execution before sale, sec. 216.....	77
PAYMENT INTO COURT—Of bailiff's fee's in case of dispute, sec. 56a.....	28
With plea of tender, secs. 122-125.....	42-43
Operates as notice of defence, sec. 126.....	43
Of judgment may be ordered, sec. 145.....	48
PEEL—Courts and clerks in.....	134
Bailiffs.....	144
Limits of divisions.....	171
PENALTIES—(<i>See Offences and Penalties.</i>)	
PENALTIES AND FORFEITURES—Powers of court to grant relief from, sec. 73.....	32
PERISHABLE PROPERTY—What is, sec. 263.....	197
Disposal of.....	197
PERSON—Meaning of.....	187
PERSONAL ACTIONS—Where the sum does not exceed \$60.....	2
Causes subject of, sec. 70.....	32-33
PERTH—Courts and clerks in.....	134
Bailiffs.....	144
Limits of divisions.....	172
PETERBOROUGH—Courts and clerks in.....	134
Bailiffs.....	144
Limits of divisions.....	173
PETITIONER—Meaning of.....	190
PLAINTIFF—Meaning of.....	190
PLEA OF NOT GUILTY—When defendant may so plead.....	97
PLEADINGS—Trial to take place without, sec. 114.....	40-41
POSTAGE AND REGISTRATION—Of papers, notices, etc., to be costs in the cause.....	100
Where papers are sent to judge, stamps to be enclosed.....	100
Clerks to be furnished with to answer.....	100
Of papers required to be served out of division.....	101
Clerk entitled to, with his fees.....	101
POST OFFICE ADDRESS—Of sureties to be given inspector, sec. 64....	11
POSTPONEMENT OF JUDGMENT—May be made, sec. 144 and 57 Vict., chap. 23, sec. 4.....	47
In jury case, sec. 119.....	42
In garnishee proceedings, sec. 198.....	70
POWERS OF COURT—To grant relief or redress.....	32
The right to grant injunction for disobedience.....	32
Where action may be tried has full jurisdiction, sec. 80....	33
PRACTICE—Of High Court may be followed in unprovided cases, sec. 304.....	100
PRESMOTT AND RUSSELL—Courts and clerks in.....	135
Bailiffs.....	145
Limits of divisions.....	173
PRINCE EDWARD—Courts and clerks in.....	135
Bailiffs.....	145
Limits of divisions.....	174

	PAGE.
PRIVILEGE—No privilege to exempt from jurisdiction of the court...	32
PROCESS—Meaning of.....	191
Of the court, sec. 6.....	7
Disposal of on separation of counties, sec. 18.....	8
Duties of clerk in respect to, sec. 44.....	20
Nature of, summonses, etc.....	20
If bailiff neglects to return, sec. 57.....	27
First, how called.....	20
How served or executed in absence of bailiff, or at a distance, sec. 103.....	10
Defect in, not to render levy unlawful, sec. 289.....	96
PROCEDURE BOOK—Clerk to sign his name on every page, sec. 45..	16
Entries from and certified copies of to be received in evidence, sec. 45.....	16
PROCESS BOOK—Of bailiff.....	17
PROCEEDINGS—Transfer of when entered in wrong court, sec. 87.....	34
Not to be set aside for matter of form, sec. 211.....	74
PRODUCTION OF DOCUMENTS—May be compelled, secs. 131, 132, 133..	45
PROHIBITION—Will be granted when cause of action divided, sec. 77	33
PROMISSORY NOTE—Action on.....	2
In an action upon must be filed before judgment, sec. 94, sub-sec. 2.....	19
PROVINCE—Where debt made payable out of.....	34
PROVISIONAL JUDICIAL DISTRICTS—Alterations in divisions, sec. 13..	3
Holding courts in.....	4
Stipendiary magistrate or judge.....	4
PUBLIC OFFICERS—Act respecting security of, sec. 35.....	14
Provisions of to apply to Division Court officers, sec. 42...	14
Protection of, sec. 285.....	95

R

RAINY RIVER—Courts and clerks in.....	135
Bailiffs.....	145
Limits of divisions.....	175
RAILWAY COMPANY—Meaning of agent of.....	191
Agent of on whom summons may be served, sec. 101(a)....	25
RECORD—Division courts not courts of.....	1
RELIEF—Courts have full power to grant in same manner as High Courts, sec. 73.....	32
No relief exceeding jurisdiction.....	32
REMOVAL OF ACTION—By <i>certiorari</i> , 57 Vic., Cap. 23, sec. 16.....	33
RENFREW—Courts and clerks in.....	135
Bailiffs.....	145
Limits of divisions.....	176
RENT—Landlord's claim for, sec. 268.....	203
REPLEVIN—Action in.....	2
Jurisdiction in, sec. 72.....	23
No other cause of action shall be joined in summons.....	23
When jury may be required, sec. 154.....	23
Under landlord's claim, sec. 273.....	23
Summons in.....	23
Particulars of property must be specified.....	23
Fees in.....	120

	PAGE.
RETURNS—To be made by clerks and bailiffs.....	31-32
RETURN—Of process—neglect of bailiff, sec. 57	27
By bailiff of foreign division, sec. 104	35
Of executions, sec. 220	79
If <i>nulla bona</i> , sec. 223	78
Of emoluments, etc., sec. 68	29, 30-31
Of jury fund, sec. 170	31-59
Of jury fund in cities forming separate divisions, sec. 171 ..	59
Of committals, sec. 248	31
REQUESTS, Court of	1
REVISED RULES	187
REVISION OF TAXATION—Judge to revise	241
REVIVING JUDGMENTS—In case of the death of party, sec. 219	79
RULES—Of High Court, applicable to commissions issued out of division courts, sec. 139	46
See index to at end of vol.	

S.

SALARY—When garnishable, sec. 174	61
SALE OF GOODS—Proceedings on sale of goods under execution, sec. 232	83
Not to take place until eight days after seizure, sec. 233	84
Notice of sale	84
Officers not to purchase at, sec. 234	84
SEALS—Every court to have, sec. 6	7
Process to be sealed or stamped	7
To be paid for out of consolidated revenue fund, R.S.O. 1887, c. 47, s. 6	7
Application for to be made to inspector	7
SECURITY COVENANT—Meaning of	191
SECURITY—Clerks and bailiffs to give, sec. 35	11
Judge fixes amount and approves under his hand, sec. 35	11
To be filed with clerk of the peace, sec. 36	11
May be sued in any court of competent jurisdiction, sec. 37	12
To be renewed upon death or withdrawal of surety, sec. 40	13
Renewal receipt of guarantee company, to be filed with covenant, 57 Vict., chap. 23, sec. 1, sub-sec. (2)	12
Procedure when surety discontinues, sec. 41	13
Provisions of Act respecting public officers to apply, sec. 42	14
Liability of former sureties, sec. 43	14
Property of office not to be delivered until after covenant executed, sec. 50	11
Duties of inspector as to covenant, sec. 61	14
Information to be given inspector as to, sec. 64	15
Certificate of filing to be produced to inspector, sec. 66	12
Security from primary creditor, sec. 196	70
In replevin (<i>See replevin</i>)	23
In garnishee proceedings (<i>See garnishment</i>)	64
In attachment (<i>See absconding debtor</i>)	285
On release of goods, sec. 259	65
On sale of perishable goods, sec. 264	197
In appeal (<i>See appeal</i>)	50
How given, sec. 149	50
Securities for money (<i>See execution</i>)	
Seizure (<i>See execution</i>)	

	PAGE.
SEPARATION OF COUNTIES—Proceedings for settling limits, etc.	8
To be continued as judge shall direct.	8
After separation.	8
Duty of county board.	8
SERVICE—Bailiffs to serve all process, sec. 51.	27
Not bound to make out of division, sec. 51.	27
Of writ of replevin (<i>See replevin</i>).	23
Of summons where suit brought into court nearest deft's residence, sec. 82.	34
Of order changing place of trial, secs. 86-87.	34
Of summons forwarded from other division, sec. 92.	35
Of summons, when to be 10 days and when 15 days before return, secs. 96-97.	24
When personal, sec. 99.	26
When claim does not exceed \$15.	26
Of subpoena, secs. 131, 132.	44
Of notice of motion for speedy judgment, sec. 111.	39
Of attaching order, sec. 179.	63
On garnishee after judgment, sec. 183.	65
On garnishee before judgment, sec. 185.	65
Where garnishee a foreign corporation, secs. 185-186.	66
Of judgment summons, sec. 235 (amended by 57 Vict., chap. 23, sec. 15).	88
Of process in attachment, sec. 261.	285
Judgment, in default of appearance on personal service, sec. 117.	24
Substitutional—When order will be granted for, sec. 100.	24
On Foreign Corporation—May be on agent, sec. 101.	25
When deft. resides out of province, 57 Vict., chap. 23, sec. 12.	25
Of process, where there is no bailiff, sec. 103.	10
When required to be served out of division, sec. 103.	10
Affidavits of—To be prepared by clerk, sec. 105.	24
To be annexed to or endorsed on summons, sec. 105.	24
Of partners, sec. 108-109.	38
Parties to appoint agent for, sec. 150.	50
Of summons on jurors, sec. 160.	56
SET OFF—What it signifies, sec. 128.	44
Notice of, sec. 128.	41
Evidence of, sec. 129.	44
If it exceeds amount due pltf., sec. 130.	44
When greater than jurisdiction, sec. 130.	44
(<i>See defence</i>)	
Fee on entering defence of.	120
SETTING ASIDE PROCEEDINGS—Judge may set aside judgment, sec. 109, sub-sec. (3).	38
Judge may set aside award of arbitrators, sec. 203.	72
SETTING OFF JUDGMENTS—Cross judgments may be set off, sec. 213.	76
SHERIFF—To be a member of county board for altering limits, sec. 13.	3
When <i>nulla bona</i> returned, sec. 223, sub-sec. 3.	78
Execution against lands to (amendment 57 Vict., chap. 23, sec. 8 and sub-secs. 2, 3, 4, 5.	80
Where writ filed with him under Creditor's Relief Act, sec. 212 (a).	75
When he takes possession of goods seized by bailiff, sec. 212 (b).	75

	PAGE.
SIMCOE—Clerks and courts in	135
Bailiffs.....	145
Limits of divisions.....	177
SOLICITOR—May appear for parties, sec. 120.....	42
Judge may exclude, sec. 121.....	42
Lien for costs.....	292
SPECIAL SUMMONS—When issued.....	20
SPEEDY JUDGMENT—Requirements for.....	39
SPLITTING DEMANDS—Causes of action not to be divided, sec. 77.....	32
STATUTE OF LIMITATIONS—Application of	297
Notice of defence, sec. 128.....	44
STAYING PROCEEDINGS—Upon application for new trial	48
On plea of tender of payment into court, sec. 123.....	43
Of execution, sec. 147.....	49
Of appeal, sec. 149	50
On issue of transcript, sec. 217	77
In action of replevin, sec. 265	23
STORMONT, DUNDAS AND GLENGARRY—Courts and clerks in.....	136
Bailiffs.....	146
Limits and divisions.....	180
SUBPENA—Parties may obtain from clerk, sec. 121.....	44
Services of, sec. 132	45
Witness fees, sec. 134	44-45
SUBSTITUTIONAL SERVICE—May be ordered on debt., primary debtor or garnishee, sec. 100.....	63
Of attaching order, sec. 179.. ..	64
SUITORS' MONEY—Clerk to keep account of sec. 46	16
Verified account to be furnished to judge when required, sec. 48.....	16
List of unclaimed in court, sec. 49	32
Collected by bailiff on process issued out of division, sec. 104	98
Clerk to mail notice of, sec. 294.....	97
SUMMONS—Where case is settled before issue of.....	120
Clerk to issue and keep record of, secs. 44-5.....	20
Remains in force.....	22
Ordinary and special.....	20
Alias, pluries.....	20
How issued.....	20
Notices and warnings thereon.....	20-1
Where suit under 229th sec.....	20
Where under 83rd sec.....	20-1
Where "concurrent" how marked	21
In actions for flooding lands	21
Endorsement of notice as to changing place of trial, sec. 98.	21
Nature and form of process, Rules 8-15.....	22
Garnishee for wages.....	22
Against non-residents.....	22
Copies of.....	21
Where special instead of ordinary and the reverse.....	22
How long in force.....	22
Interpleader summons.....	23
In replevin.....	23-4
Where summons under sec. 181.....	24
When returnable.....	24

SUMMONS—(Continued).	PAGE.
Against a corporation.....	25
How served upon non-residents.....	25
Affidavit of service out of the province.....	25
Service after lapse of time.....	26-6
Writ, how renewed.....	26
<i>Service of</i> —Duty of bailiff to serve.....	27
On garnishee.....	26
Where claim over or under \$15.....	26
Bailiffs not bound to travel beyond limits of their division..	27
Cannot charge mileage beyond limits of county.....	27
Upon service, bailiff's duty.....	27
His duty when not served.....	27
If return not made within 6 days of, bailiff loses fees....	27
When not served in time to make notices and warnings available.....	29
<i>On garnishment of wages</i> —Memorandum to be endorsed on, sec. 177.....	62
On garnishee after judgment, sec. 181.....	64
On corporation whose head office is not in the province, sec. 182.....	64
Mode of service, sec. 183.....	65
To garnishee before judgment, sec. 185.....	65
Service, sec. 186.....	66
Service on garnishee to bind debt, sec. 189.....	67
Adverse claims, sec. 197.....	70
SUSPENSION OF OFFICER—By the judge.....	10
Notice thereof to the Provincial Secretary.....	10
SURETIES—Responsibility of for deputies of clerks and bailiffs, sec. 32, 33, 34.....	10
Covenant available, sec. 37.....	11
Inspector to be informed of new.....	11
Certified copies to be received in evidence.....	12
In actions against sureties, sec. 39.....	12
Proceedings on death, withdrawal, etc., sec. 40.....	13
Where sureties discontinue, sec. 41.....	13
Liability of former, sec. 43.....	14
Officers to inform inspector of names of, sec. 65.....	14
And change, sec. 65.....	15
Liability in respect to process served or executed at a dis- tance, sec. 104.....	10
In appeal (<i>See appeal</i>).....	
T.	
TABLE OF FEES—To be hung up in clerks office, sec. 53, sub-sec. 3..	102
Card supplied from inspector's dept.....	102
TARIFF—No other fees to be taken than these provided by, sec. 58..	102
Of clerk's fees.....	103-106
Of bailiffs.....	107-109
Witnesses.....	109
Appraisers.....	110
In suits not exceeding \$10.....	110
Changes in discussed.....	111-124
TAXATION OF COSTS—Clerks to tax costs, sec. 46.....	241
Revision of by judge.....	241
Fees to be, sec. 53.....	103

	PAGE.
TELEGRAPH COMPANY—Meaning of agent of.....	191
Service of process on, sec. 10 (b).....	191
TENDER OF PAYMENT—Plea of, sec. 122.....	42
Payment into court, sec. 122.....	42
Notice of, sec. 122.....	42
Amount to be paid pltf., less \$1, to deft. for his trouble, sec. 123.....	43
Rule as to costs in such case, sec. 124.....	43
Tender before action against officer of court.....	97
TENURE OF OFFICE—Officers appointed during pleasure, sec. 30.....	10
TERRITORIAL DISTRICTS—(R.S.O., chap. 91, sec. 18).....	
Same powers to be exercised in by the district judge, sheriff and inspector, as by the county board, sec. 13, sub-sec. 3..	3-4
TERRITORIAL JURISDICTION—Court in which action may be entered and tried, secs. 81, 82, 83.....	34
(Subsequent sections as to proceedings apply).....	
THUNDER BAY DISTRICT—Clerks and courts in	136
Bailiffs.....	146
Limits of divisions.....	180
TIME, COMPUTATION OF—Month, one calendar month, secs. 24, 40....	13
Days, within so many, secs. 64, 86, 109, etc.....	34-38
TORONTO—Courts in.....	5
Sittings of.....	5
TORT—Actions of, within competency of jurisdiction (<i>See jurisdiction</i>)	
TRANSCRIPT OF JUDGMENT—Fees on	123
Where transcript can and cannot issue	123-4
How prepared.....	124
Enforcing, sec. 89.....	35
Against clerks and bailiffs, sec. 89.....	35
To be prepared and transmitted on application of judgment creditor, sec. 217.....	77
Proceedings, sec. 218	78
To County Court (Sections relating to repealed by 5 Vic., Cap. 23, sec. 8).....	80
To be directed to sheriff.....	124-5
TRIAL—Proceedings at.....	40-1
If defendant does not appear.....	42
Should summons not be personally served..	42
Judge may adjourn.....	42
Who may appear.....	42
Judge may prevent any person appearing on.....	42
Listing cases for	41
If appeal.....	41
By jury, secs. 154, 155, 156.....	52
By jury, secs. 166-7.....	57
Postponement of, secs. 118-119.....	42
TORT—Action for.....	20
TROVER—Action of, sec. 70.....	2
U	
UNCLAIMED MONEYS—List of.....	23
Disposal of, sec. 295.....	98

V.

	PAGE.
VACANCIES IN OFFICES—When they occur.....	10
VENUE—When suit brought in wrong court, sec. 87.....	34
Changing place of trial, secs. 82, 83, 84, 85.....	34
In actions against clerks and bailiffs, sec. 88.....	34
May be changed by consent, sec. 91.....	35
VERDICT—May be given by judge instanter, or postponed, sec. 144..	47
Or sent to clerk's office, 57 Vic., Cap. 23, sec. 4.....	47
Not to be set aside for matter of form, sec. 211. (<i>See judgment</i>).	
VICTORIA COUNTY—(Clerks and courts in.....)	136
Bailiffs	146
Limits of divisions.....	181

W

WAGES—Infant may recover for, sec. 76.....	255
Or salary, when garnishable, secs. 174-5.....	61
WARDEN—Member of board for altering divisions	3
WARNINGS—No fee for additional on summons.....	120
WARRANTS—(<i>See Execution</i>).	
To be issued by clerk, sec. 46.....	20
To be executed by bailiff, sec. 51.....	24
Of commitment, sec. 242.....	89
Of attachment, sec. 249.....	90
Of commitment of officer for misconduct, sec. 277	92
Protection of persons acting under, sec. 285.....	95
Clerk or bailiff entitled to verdict on production of, sec. 286	95
Where action brought, officers may plead not guilty, by statute, sec. 288.....	96
WATERLOO—Courts and clerks.....	136
Bailiffs	146
Limits of divisions.....	181
WELLAND—Courts and clerks.....	136
Bailiffs	146
Limits of divisions.	182
WELLINGTON—Clerks and courts.....	137
Bailiffs	147
Limits of divisions.....	183
WENTWORTH—Clerks and courts.....	137
Bailiffs	147
Limits of divisions.....	184
WILL—No jurisdiction in action in which the validity of bequest is disputed	2
WITHHOLDING SUITORS' MONEYS.....	92
WITHERNAM—Writ of, how served.....	25
Not to be served until bailiff has replevied.....	25
WITNESSES—Service of subpoena.....	44
If conduct money insufficient.....	45
Who may serve subpoena.....	45
Penalty for refusing to obey.....	45
Where witness called in court, but not subpoenaed.....	45
Fine of applicable to party injured.....	45

WITNESSES—(Continued).	PAGE.
Attendance of, compellable before inspector, sec. 62.....	15
Affidavit of service of subpoena on, sec. 131, 132, 133.....	44-45
Expenses to, sec. 134.....	45
Fees and mileage (<i>See tariff</i>).....	45
When commission to take evidence, sec. 135.....	45
Examination, where witness unable to attend trial, sec. 137.....	46
Where witness resident in remote part of province, sec. 138.....	46
Costs, where witnesses summoned, and case settled before trial, sec. 209.....	74
Fees to.....	109-117
YORK—Courts and clerks in.....	137
Bailiffs.....	147
Limits of divisions.....	185

MISCELLANEOUS NOTES.

Giving credit for fees.....	288
Revision of taxation.....	286
Settlement before service.....	286
Accepting cheques.....	287
Expenses of court accommodation.....	287
Collecting interest.....	287
Notice of alteration of limits.....	287
Agent's or counsel fee.....	287
Duty of bailiff.....	288
As to bailiff's fees.....	288
Enquiry by inspector.....	288
Injunction.....	289
Commission to examine.....	290
As to clerks and bailiffs.....	290
As to leave of absence.....	290
Obligations of sureties.....	291
Process must not be delayed.....	291
Service out of division.....	292
As to return.....	299
As to judgment.....	292
Deputy judge.....	292
Solicitor's lien.....	292
Judgment over 20 years old.....	292
As to new clerk or bailiff.....	293
As to transcript.....	293
As to replevin.....	293-294
As to examination of garnishee.....	294
As to warrants of commitment.....	294
As to new trial.....	294
As to appeals.....	295
As to payment of clerk.....	295
Arbitration.....	295
As to County judge.....	296
As to residence of judges.....	296
As to postage.....	296
As to covenants.....	296
Mode of making tender.....	296-297

	PAGE.
As to money in court.....	297
Statute of limitations.....	297
As to entering judgment.....	298
Part of claim.....	298
Suits of minors.....	298
Splitting causes of action.....	298
As to executing writ.....	298
Debt or money demand.....	299
Married women.....	299
Service of summons in claims for less than \$15.....	299
As to executions.....	299
<i>Fieri facias</i>	299
Poundage.....	300
Powers of judge.....	300
Information as to the Division courts department.....	301-304

PART I.

DIVISION COURTS.

The Division Court supplanted the old Court of Requests, as a means of collecting small debts, in 1842.—(4 and 5 Vic. cap. 53.)

Amendments, embodying many changes and additions, were made from time to time, up to 1887, when, upon the consolidation and revision of the statutes, the several Division Courts Acts then in force were all brought into one Act, revised and consolidated.

Several amending Acts have also since been passed by the Ontario Legislature, and under which the jurisdiction has been further enlarged.

Division Courts are not courts of record, but the judgments therein have the same force and effect as judgments of courts of record. Sec. 7.

Where Division Courts Have Jurisdiction.
Secs. 70, 71, 72, 81.

The Division Courts now have jurisdiction in the following cases :—

All personal actions, where the sum claimed does not exceed \$60.

All claims of debt account, breach of contract or covenant, or money demand, whether payable in money or otherwise, where the amount or balance claimed does not exceed \$100.

All claims for the recovery of a debt or money demand, the amount or balance of which does not exceed \$200, and the amount is ascertained by the defendant's signature. In the case of a promissory note, etc., the amount would be exclusive of interest.

In all actions of replevin, in case the value of the goods or other property distrained does not exceed \$60, and in case the title to land is not brought in question.

Where Division Courts Have Not Jurisdiction.—Sec. 69.

Division Courts have not jurisdiction :—

In actions for gambling debts.

Actions for spirituous or malt liquors, drank in a tavern.

Actions on notes of hand, given wholly or partly, in consideration of a gambling debt, or for such liquors.

Actions for recovery of land, or actions in which the right or title to land is in question.

Actions for any toll, custom or franchise.

Actions in which the validity of any devise, bequest or limitation under any will or settlement is disputed.

Actions for malicious prosecution, libel, slander, criminal conversation, seduction or breach of promise.

Actions against a justice of the peace, for anything done by him in the execution of his office, if he objects thereto.

Number of Courts in a County.

There shall not be less than three, nor more than twelve Division Courts in a county or union of counties, and there shall be at least one court in each city and county town. Sec. 4.

County Board—May Alter Limits, Etc.

The county judge, the sheriff, the warden and the Division Court inspector may alter the number, limits and extent, and establish or cancel courts, upon the necessary notice being given for that purpose. Sec. 13.

Provisional Judicial Districts.

In provisional judicial districts this power is conferred upon the district judge, the sheriff and the inspector. Sec. 13, sub-sec. 3.

Location of Clerk's Office.

The Lieutenant-Governor-in-Council now appoints the place within any division in which the clerk's office must be located. (57 Vic., cap. 23, sec. 9.) Heretofore the designation of the place for the clerk's office had been left to the judge.

HOLDING COURT.

A court must be held in each division once in every two months, or oftener in the discretion of the judge. But if found not expedient that a court should be held so often, the sittings may be reduced upon application to the Lieutenant-Governor-in-Council. A court must, however, be held at least once in every six months. Secs. 8-12.

In provisional judicial districts a court must be held once in three months, with the same discretionary powers. And the Lieutenant-Governor may make such further regulations as he may consider expedient for the holding of courts in districts. Sec. 13, sub-sec. 3.

The provisions of law from time to time in force relating to Division Courts in counties apply to the Division Courts in territorial districts. R. S. O. c. 91, sec. 18.

In those districts where stipendiary magistrates are appointed judges of Division Courts, they may appoint and from time to time alter the times and places within the divisions where the court shall be holden—subject to the approval of the Lieutenant-Governor-in-Council.

Section 14 empowers the judge, upon petition of a municipal council in which no Division Court has

been already established, to establish and hold a court therein. But no business can be transacted in such court until after an order has been passed by the Lieutenant - Governor - in - Council approving thereof.

*Sittings and Clerk's Office to be Within the Division.—
Cities Excepted.*

The sittings of the court and the clerk's office must be within the division—except in cities where two courts have been established. Sec. 8. In such latter cities, and with the approval of the Lieutenant-Governor-in-Council, the sittings may be held in either division, and both clerks may keep their offices in the same division.

In the two Toronto courts, there must be at least weekly sittings, except during the month of August ; and at least monthly sittings for hearing judgment summonses. The judges, or any two of them, of whom the senior judge must be one, may appoint additional sittings. (54 Vic., cap. 15, sec. 3.)

It is required of a municipality in which a court is held to furnish a court room and other necessary accommodation. Sec. 10. This must not be in connection with a hotel or tavern. Should the municipality fail in this respect, the judge may hold a court in any suitable place in the division, or in another division in the county ; and the party furnishing the requisite accommodation shall be entitled to receive five dollars per day for every day the court is held from the municipality. Sec. 10.

In county towns the judge has the right to hold the sittings of the court in the courthouse. Sec. 11.

Adjournment by Clerk.

Where the judge or acting judge, from illness or any other cause, does not arrive in time, or is unable to open the court on the day appointed, the clerk or his deputy shall, after eight o'clock in the afternoon, adjourn the court by proclamation to an earlier hour on the following day, and so from day to day, adjourning over any Sunday or legal holiday until the judge arrives, or until other directions have been received from the judge. Sec. 25.

Liability of Judge.

A county judge is not answerable in an action of trespass for an erroneous judgment, or for the wrongful act of his officer, done, not in pursuance of, though under color of a judgment. But he is responsible for an act done under his command and authority, when he has jurisdiction. Trespass would lie against a judge if he gave an order of commitment to the wrong gaol. *Houlden v. Smith*, 14 Q.B., 841.

Powers and Duties of Judge.

Sections 21 to 25 defines the duties and powers of judges.

The appointment of a junior judge for the county shall not prevent or excuse the senior judge from presiding at any of the Division Courts when required by the public interests. Sec. 21, sub-sec. 3:

Deputy Judge.

In case of illness or absence of the judge, the judge of the County Court of any other county may hold the court. Or the judge may appoint a barrister to act as his deputy. In the latter case notice of the appointment must be forthwith sent to the Lieutenant-Governor. No such appointment shall continue for more than a month without a renewal of the like notice. If the Lieutenant-Governor disapproves he may annul the appointment. Sec. 22.

Legal Holidays.—R. S. O. c. 1, sec. 8-16.

Courts cannot be held on legal holidays. The word holiday includes Sunday, New Year's Day, Good Friday, Easter Monday and Christmas Day, Dominion Day, the day appointed for the celebration of the birth of the Queen and her royal successors, and any day appointed by proclamation of the Governor-General or Lieutenant-Governor as a public holiday, or for a general fast or thanksgiving.

Seals.—Sec. 6.

Every court shall have a seal. When an old seal is worn out, or is no longer fit for use and a new seal is required, application should be made to the inspector. Such applications should be accompanied with an impression of the old seal. Seals are paid for out of the consolidated revenue fund. Care should be taken to have all process of the court properly stamped with the court seal. Without a seal the process would be irregular and liable to be set aside.

Separation of Counties.

For regulation of proceedings and settling limits on the separation of counties see sections 15, 16, 17, 18, 19.

Proceedings to be continued as judge shall direct.

Clerks and officers to deliver up papers as judge shall order.

After separation, proceedings in certain cases to be continued in senior county.

County Board shall, within three months after proclamation, appoint number and limits of divisions.

Clerk of the Peace.—Sec. 20.

It is the duty of the clerk of the peace to keep a record of the divisions declared and appointed, and the times and places of holding the courts, and also of the alterations made from time to time.

Officers of Courts.—Sec. 26.

For every court there must be a clerk and bailiff. They are appointed by the Lieutenant-Governor-in-Council, and are notified from the department of the Hon. the Provincial Secretary. Where the business of any court requires the services of more than one bailiff additional officers may be appointed.

Officers of the courts must be British subjects, and not under twenty-one years of age.

They cannot practice as barristers or solicitors. Sec. 28. But they may act as conveyancers. Every

officer is required, within five days after his appointment, to notify the inspector. Notice of the appointment is filed in the inspector's department, from whence blanks are forwarded to be filled up and returned, giving particulars of sureties. This should be done as soon as possible.

Assistants—Deputies.

Assistants employed in the offices of clerks are not deputies, and are invested with none of the powers delegated to deputies.

So with bailiffs' assistants. A bailiff may employ assistance in serving papers, taking care of goods, after levy, etc. But all writs of execution and attachment must be enforced by the bailiff or by his deputy properly appointed.

Clerks and Bailiffs as Municipal Officers.

Clerks are eligible for municipal office. They may also be justices of the peace.

Bailiffs are disqualified by sec. 77, cap. 184, R. S. O., from being elected municipal councillors.

Deputies—Leave of Absence.—Secs. 32, 33, 34.

Leave of absence may be granted by the inspector to any clerk or bailiff for a period not exceeding two months. Officers when granted leave of absence appoint suitable deputies to act for them. The approval of the inspector must be obtained to such appointments.

When suddenly prevented from acting through illness or accident, the clerk may, with the approval of the judge, appoint a deputy to act for him.

Deputies may be removed at pleasure. The officers appointing them and their sureties are held responsible for the acts of their deputies.

Tenure of Office.

All officers are appointed during pleasure.

The Lieutenant-Governor, upon report of the inspector, may dismiss from office, for misconduct or incompetency, any clerk or bailiff. Sec. 30.

Suspension of Officer by Judge.

The judge may suspend or remove a clerk or bailiff within his county, heretofore appointed by a judge. Sec. 29.

The judge, for cause, may suspend any clerk or bailiff appointed by the Lieutenant-Governor. Sec. 31, sub-sec. 2.

Where this power is exercised it is the duty of the judge forthwith to report to the Provincial Secretary. It is also made the duty of the judge to notify the Provincial Secretary of any vacancy occurring in his county.

Vacancies.

During any vacancy in the clerkship, by death or otherwise, the county attorney for the county or district becomes the clerk and exercises all the powers of such.

When vacancies in the bailiffship occur papers may be given to a bailiff of an adjoining division, in the same county ; or they may be served or executed by such other bailiff or person as the judge or clerk issuing the same orders. Sec. 103.

Executive Officers.

Bailiffs are executive officers of the court.

Both Offices Cannot be Held by One Man.

Both offices of clerk and bailiff cannot be filled by the same person.

Covenants.—Sec. 35.

Before a clerk or bailiff enters upon his duties the covenant of himself and sureties must be filed. Sec. 36.

The covenant must be submitted to the judge for his approval. The measuring of the amount of security to be given is altogether left with the judge. The sureties must be freeholders and residents within the county. Sec. 35.

The approval of the judge must be in writing.

The responsibility of the judge is "judicial," not administrative. The public are entitled to a covenant free from possible objections.

The security of a guarantee company may be accepted.

It is also part of the duty of the inspector to see that proper security has been given and that the sureties continue sufficient.

Whenever a clerk or bailiff gives new sureties he should immediately inform the inspector of the change, giving names, postoffice address and calling of such new sureties.

None of the parties to a former covenant are discharged from their liability on account of any

matter done or omitted before renewal of the covenant.

Certificate of Filing Covenant.

A certificate of the filing of his covenant should be obtained by the officer from the clerk of the peace, who is entitled to charge a dollar for the same. This certificate should, as soon as received, be sent to the department of the inspector for examination, from whence it is returned in due course. It should be kept by the clerk or bailiff ready to be produced when called for. It is the first thing asked for by the inspector when visiting an office.

A duplicate of the covenant, with the certificate of filing thereon, may be sent the inspector.

Surety of Guarantee Company.

In the case of guarantee companies or covenants requiring periodical renewal it is necessary that the renewal receipt should also be filed with the clerk of the peace, and attached to the covenant from time to time as received. For this the clerk of the peace is entitled to a fee of fifty cents. 57 Vic., cap. 23, sec 1, sub-sec. 2.

Blank forms of covenants may always be had upon application to the department of the inspector.

Actions on Covenants.

Suit may be brought upon the covenant in any court of competent jurisdiction and damages recovered. Sec. 37.

A copy of the covenant, certified by the clerk of the peace, shall be received in all courts as sufficient evidence of the due execution and contents thereof, without further proof. Sec. 38.

Information as to Covenants.

Particulars of all covenants are entered in a book kept for that purpose in the office of the inspector and may be obtained by those requiring the same.

The entries made by clerks and bailiffs in the books required to be kept by them shall be prima facie evidence against the sureties.

Renewal of Covenant.—Sec. 40.

On the death of a surety, or when a surety becomes insolvent or removes to another county, the clerk or bailiff shall, within one month after being notified by the judge, give anew the like security. If the officer fails to furnish the necessary new surety within the required time the judge shall suspend him and the office becomes forfeited.

Sureties Desiring to Withdraw.—Sec. 41.

When a surety desires to withdraw from his liability the course to be pursued is to give notice in writing of his intention to the clerk or bailiff, and also to the judge. Such notice may be served personally or left with some grown-up person at the office or place of residence of the person to whom it is addressed, or may be mailed, prepaid and registered, to such person.

Upon receipt of notice, a new surety should be furnished.

If not given within a month after notice to the officer and the judge, the clerk or bailiff may be suspended, and the office becomes forfeited.

All accruing liability on the part of the surety giving such notice ceases after five weeks from the notice given.

Sections 15 to 20, both inclusive, of "The Act Respecting Public Officers," apply to the securities of clerks and bailiffs, with the substitution of "the judge of the court" for the Lieutenant-Governor.

The Inspector.—Secs. 61, 62.

The Lieutenant-Governor appoints. The inspector holds office during pleasure. His duty is:—

To make a personal inspection of every Division Court and of the books and papers belonging thereto.

To see that the proper books are provided, that they are in good order and condition, that the proper entries and records are made therein, and that the court papers are properly classified and preserved.

To see that the duties of the officers are efficiently performed, and that the office is at all times duly attended to by the clerk.

To see that lawful fees only are taxed or allowed as costs.

When directed to do so by the Lieutenant-Governor, to ascertain that proper security has been

given by any clerk or bailiff, and that the sureties continue sufficient.

To report upon all such matters as expeditiously as may be to the Lieutenant-Governor for his information and decision.

When making enquiry into the conduct of officers the inspector is clothed with power to summon and enforce the attendance of the clerk or bailiff, or other persons, to give evidence on oath, and to compel them to produce documents and attend as witnesses, the same as any court has in civil cases.

Books and Papers to be Produced for Inspector.

Clerks and bailiffs, whenever required by the inspector, shall produce for his inspection, at the clerk's office, all books and documents required to be kept by them. It is also their duty to report to the inspector such matters relating to any cause or proceeding as the inspector shall require. Sec. 63.

Inspector a Member of the Board of County Judges.

The inspector is appointed a member of the Board of County Judges. 57 Vic., cap. 23, sec. 3.

Inspector May Prosecute Parties Holding Books and Papers.

He may make the declaration provided in subsection 2 of section 50, for the prosecution and punishment of persons wrongfully holding moneys, books or papers belonging to the court.

Books of Officers of Courts.—Rules 146, 185.

The books required to be kept by the clerk are:—

The procedure book and foreign procedure book, cash book, debt attachment book, clerk's fee book, judgment debtor's book, order book.

The two first named books may be in the respective forms contained in schedules B and C of the Act 57 Vic., cap. 23.

In the first, or procedure book, should be entered a note of all process issued, and of all orders, judgments, transcripts received, warrants, executions and returns thereto, and of all other proceedings, in every cause and at every court.

Account of Fines.—An account of all fines shall be entered by the clerk in a book to be kept by him for that purpose—which book shall be open to the public and shall at all times be accessible to the judge and inspector.

The Cash Book.—In the cash book should be entered, from day to day, an account of all suitors moneys paid into and out of court. In all large offices it should be balanced monthly, and should in no case be allowed to stand unbalanced longer than from quarter to quarter. The amount of balance should be the amount of the aggregated amount of the unreceipted items.

Fee Books.—All fees and emoluments should be entered up regularly from day to day in the clerk's fee book. This will be found necessary so as to enable the clerk to make his annual returns required by sec. 68.

Order Book.—The order book is required by sub-rule (a) of Rule 146. In it are to be entered all orders for the issuing of process, or *alias*, or subsequent summonses, and executions or other documents requiring duties to be performed by the clerk. These entries should be made daily and dated as they occur, and signed by the party requiring the same, his solicitor or agent.

Judgment Debtors' Book, in which shall be entered the date when each judgment debtor was examined and discharged, together with the number and style of cause.

The bailiff is required to keep :—

Bailiff's Fee Book.—A fee book, in which he shall, from day to day, enter all fees, charges and emoluments received by him by virtue of his office.

Bailiff's Process Book.—A process book, in which he shall enter every warrant and execution delivered to him, showing what has been done by him under it; and if not executed according to the exigency thereof, giving the reason why it had not been so executed. Book to be open to the inspection of judge and clerk.

Bailiff's Cash Book.—A cash book, showing all payments received by him of moneys, on executions or otherwise, from defendants, garnishees or others.

Entries.

All entries in the books should be made in a neat manner.

It is the duty of the clerk to sign every page of the procedure book. As soon as an entry is made on a page, such page should be signed by the clerk.

In Cities.—Every clerk for a division embracing a city, or part of a city, shall keep a separate book, in which he shall enter, from day to day, all fees, charges and emoluments of all kinds, showing the sums received by him. Rule 147 ($\frac{1}{2}$).

Books Supplied by County.—52 Vic., cap. 12, sec 1.

Where the fees and emoluments of a clerk or bailiff are under \$500 per annum, the county is obliged to supply the necessary books required by these officers. The application should be made to the county treasurer. A certificate of the return of fees can be obtained from the inspector's department, to file with county treasurer, when necessary.

When Supplied by Government.

Government supplies the necessary books to officers in districts where the fees do not reach the \$500 limit. Application is to be made to the inspector's department. No new books need be procured until the books now in use are filled up, except those added by the new rules.

Claim and Particulars.—Sec. 94.

The plaintiff shall enter a copy of his claim with the clerk, who thereupon shall issue summons.

Every claim should show the names in full and the present or last known place of abode of the parties, and must be legible and delivered to the clerk at his office. If the plaintiff is not acquainted with the defendant's full name, he may describe him by his surname, or by such name as he is generally known by. See Rule 3.

The claim shall contain a statement of the particulars thereof, or of the facts constituting the cause of action, and of the sum or sums claimed in respect thereof. These particulars should be framed in ordinary and concise language.

In an action upon a promissory note, the note shall be filed with the clerk before judgment, unless otherwise ordered, or unless the loss of the note be shown, or that it cannot for some satisfactory reason be produced.

In suits brought under the provisions of the 82nd section, (when actions may be tried in the court nearest the residence of defendant), the claim shall contain a statement :—

“And the plaintiff enters this suit and claims to have it tried and determined in this court, because the place of sitting thereof is nearest to the residence of the defendant.”

Where actions are brought against officers of the court and their sureties, on their covenant, the claim shall be according to form 18.

Where the excess is abandoned, it must be done in the first instance and in the claim. But the judge may at any time, before judgment, permit such abandonment. Rule 7.

When not furnished by plaintiff, copy of claim may be made out by the clerk, also copies of set-off or counter-claim, at the fees allowed in the tariff—to be taxed against the party ordered to pay costs.

Process.—Sec. 44. Rules 8-15.

It is the duty of the clerk to issue all summonses and process, under the seal of the court, with the exception of warrants of attachment issued by justices of the peace. All blanks for dates and otherwise should be filled up. The writs should be signed by the clerk, dated the day on which the claim is entered, and numbered to correspond with the claim.

The first process is held to be the commencement of the action. For the recovery of a debt or money demand, or for *tort* or other personal action, it may be a summons, called "ordinary summons."

In actions for the recovery of a debt, where the particulars of the plaintiff's claim are given with reasonable certainty and detail, the first process may be a summons, called "special summons."

Where *alias* or *pluries* process becomes necessary, it shall be dated on the day on which it actually issues.

Where the plaintiff sues under the 229th section—that is on cheques, notes, etc., seized by the bailiff—the proceedings may be by "ordinary summons" or "special summons." At the end of the particulars, or in addition to the notices and warnings on the summons, notice shall be given, as in form 52, that the beneficial plaintiff only has power to discharge the suit, the subject matter thereof having been seized under execution.

Leave may be granted to bring an action under the 83rd section—that is when an action may be

brought in another than the regular division—on the production of a satisfactory affidavit. In the summons in this case it shall be stated:—"Issued by leave of the judge." Rule 14. The leave for issuing summons shall be applied for before the judge by whom the action was tried under the order, and leave shall not be given to bring a suit in a division other than the one adjacent to the division in which the party sued resides, but the division may be in the same or an adjoining county. Where there are more defendants than one, and they are in different counties, concurrent summonses may issue for service on defendants residing out of the county in which action is brought; but the costs only of summonses actually served shall be allowed on taxation. Such summonses must correspond with the original and be marked "Concurrent summons." Rule 15.

It is the duty of the clerk to see that process of the court is not used for improper purposes or in an illegal manner.

A summons should not be issued where clearly the court has no jurisdiction.

Actions for flooding lands, under 52 Vic, cap. 16, where the sum claimed does not exceed \$20, may be commenced by ordinary summons.

The notice required by section 98, as to changing place of trial, must be endorsed on the summons and signed by the clerk.

At the time of delivery for service, copies should also be furnished with the notices thereon required by the rules.

See Rules 8 to 15, inclusive, and the forms therein referred to, as to the nature of process to be issued and what is required in each particular case.

Summons Against Non-residents.—Summons may issue against non-residents, in cases where the Act provides that an action may be brought, in the division in which the cause of action arose and continue to completion as if the defendant resided in the Province. Sec. 12, 57 Vic., cap. 23.

Garnishee Summons for Wages.—In garnishee summonses, where the debt is for wages, the memo required by sec. 177, showing the residence, occupation, etc., of the primary debtor, should be attached.

If the debt be due by an unmarried person having no family depending on him for support, that fact should be stated, or annexed to the summons, otherwise a family will be presumed.

Writ in Force.—No original summons remains in force for more than twelve months from date. But if the defendant shall not have been served within that time, plaintiff may, before the expiry of the twelve months, apply to the judge, who may grant leave to serve the writ, notwithstanding the lapse of time.

See Rule 25 as to further proceedings and renewal of the writ—making the original available to prevent the operation of the statute of limitations.

In case special summons is issued when ordinary summons would have done, or *vice versa*, the same may be altered or amended by order of the judge upon terms. Rule 26.

Interpleader Summons. — Interpleader summons shall be issued on application of the bailiff, from the court out of which process issued, or the court holden for the division in which seizure has been made, at the option of the bailiff.

In actions of replevin no other cause of action shall be joined in the summons.

The action may be brought in the court for the division in which the defendants or one of the defendants resides, or carries on business, or where the goods have been distrained.

Replevin.

Sec. 72 gives the court jurisdiction in all actions of replevin, where the value of the goods, or other property or effects distrained, taken or detained, does not exceed the sum of \$60, as provided in *The Replevin Act*, R. S. O., 1887, c. 47, s. 56; 43 V. c. 8, s. 3.

Either party may have a jury. Sec. 154.

If replevin in case of goods seized for rent, so much of the goods distrained shall be sold as will satisfy the warrant, and the surplus returned as in other cases of distress for rent and replevin.

Summons in Replevin.—See Rule 43 and sub-rules for conditions upon which an order is granted for the writ. “Summons in replevin” is the first process. The description and value of the property shall be stated in the writ.

Upon entering the claim, plaintiff must specify particulars of the cattle or other property distrained,

and the distress or other taking or detention of which he complains.

Summons to Garnishee.

Where the summons under section 181 (providing that primary creditor may summon garnishee, etc.) is issued from any court other than that in which the primary creditor has obtained judgment, a transcript must be filed previous to the issuing of summons against the garnishee.

Service of Summons.

Every summons shall be returnable on the eleventh day after the day of service. In case defendant or defendants do not reside in the county in which the action is brought, the summons is returnable the sixteenth day after service. Rule 16.

In case of different, separate and not joint interests, the summons must be served upon the defendant residing out of the county, fifteen days at least before the return day. Rule 19.

Substitutional Service.

Where it is made to appear to the judge, upon affidavit, that reasonable efforts have been made to effect personal service and that there is wilful evasion of service, etc., and that the defendant has an office or agent in Ontario, the judge may, by order, grant leave to serve the summons, in such manner and upon such person, for defendant, primary debtor or garnishee, as to him may seem proper; and in the same order may direct that all further notices in the suit, up to judgment, may be served in like manner. Rule 20.

Every summons against a corporation, firm or individual, not having its chief place of business within the Province, or other papers in the action, may be served on the agent of such corporation, etc., whose office or place of business, as such agent, is either within the division in which the summons issued or nearest thereto. Rule 21.

Copy of the writ of *withernam*, mentioned in Rule 55, must be served on defendant personally, or if he cannot be found, by leaving copy at his usual or last place of abode, with his wife or some other grown person, being a member of his household or an inmate of his place of abode.

The copy of writ shall not be served until the bailiff has replevied the property, or some part of it, if he cannot replevy the whole.

The service of summons upon non-residents may be made by the bailiff of the court out of which it issued, or by some competent person, who may, after or before the service, be approved of by the judge, or by the clerk of the court, for that purpose, but such summons shall be served at least fifteen days before the return day thereof.

Affidavit of service may be sworn to before a notary in the country in which service has been made, if made out of the Province, and shall be held to be as effectual as if made by a bailiff of the court before the clerk. Sec. 14, 57 Vic., cap. 23.

If any defendant named in an original writ of summons has not been served therewith, the plaintiff may, before the expiration of the twelve months for

which it shall be in force, apply to the judge for leave to serve the writ after, and notwithstanding the lapse of, said period. Rule 25

The judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the service shall be good, if made within twelve months from the date of the order, and so from time to time during the currency of the further period allowed. Rule 25 (a).

Writ, How Renewed.—The writ in all such cases shall be renewed by being marked with the date of the day, month and year of such renewal, or to be marked by the clerk, upon delivery to him by the plaintiff, his solicitor or agent, of the judge's order. Rule 25 (b).

In such case the original writ shall be available to prevent the operation of any statute of limitations. Rule 25 (c).

Service on Garnishee.—The service of the summons on garnishee shall in all cases be made at least ten days before the return thereof; and the service on the primary debtor or debtors ten, or fifteen days, according to the places of residence of the parties to be served. If the amount of the primary creditor's claim exceeds \$15, the service shall be personal, unless the judge orders otherwise; if such claim does not exceed \$15, the service may be personal, or upon the wife, servant or some grown up person, being an inmate of the dwelling house or usual place of abode, trading or dealing of the person required to be served. Sec. 99.

Duties of Bailiffs.

To serve and execute all summons, orders, warrants and writs delivered to them by the clerk for service, whether bailiffs of the court out of which the same issued or not, and as soon as served to return same to the clerk. Subject to the provisions of section 82, as to entering action in the nearest court—they are not required to travel beyond the limits of their division—nor can they charge mileage for any distance travelled beyond the limits of the county in which the court of which they are bailiffs is situated. Sec. 51.

Upon a bailiff receiving summons for service, he should, immediately after service has been effected, make his return, showing the mode of service. Unless such return be made within six days after service, the bailiff will not be entitled to the fee for return and attendance and making affidavit. Rule 183.

Where a summons has not been served, the bailiff should, immediately after the time for service has expired, return the same to the clerk, stating the reason for non-service on the back of the summons.

Bailiffs must return executions within the 30 days prescribed by the Act, unless renewed, or unless the seizure under the execution has been so recent that he has been unable to sell and advertise within the 30 days. In this latter case, he must make a report to the clerk as to the condition of matters, Rule 185 (a).

If unable to sell, or to realize a reasonable amount, he must not sacrifice the property, but must offer it

for sale again, if within the 30 days. If after the 30 days and the execution has not been renewed, the execution must be returned—"Property on hand for want of buyers." Rule 185 (*b*).

In this latter case, the clerk cannot renew the execution. He must issue another process directing the bailiff to sell the property for what it will bring. Rule 185 (*c*).

All the money received for debt, interest, costs, fees and percentage, must be paid over to the clerk, except disbursements. After the bailiff's fees and charges have been duly taxed, the clerk must pay the bailiff's proper taxable fees on executions duly returned according to law, and none other. Rule 185 (*d*).

All money received by virtue of his office should be immediately paid over by the bailiff. Neglect or failure to do so subjects him to the loss of his office.

The bailiff must attend every sittings, and see that suitable accommodation is provided. He must make the necessary proclamations, call parties and witnesses, preserve order, and is empowered to exercise the authority of a constable. He may, with or without warrant, arrest offending parties and bring them before the nearest justice of the peace. Sec. 52, Rule 184.

At the time of delivering a person arrested to the gaoler, the bailiff, or other officer, must also deliver the warrant of commitment, which should have endorsed thereon a statement of the actual day of arrest and the amount of bailiff's fees and mileage. Rule 187.

Immediately upon receiving an execution the bailiff should endorse thereon the day and hour when received. In addition to the formal return on every execution, a statement of all charges made for fees, except disbursements, should be given.

A similar statement should be given in making returns of writs of replevin and warrants of attachment. Rule 188.

The cash book required to be kept should show entries of all payments received by him from any party to a suit. Rule 189.

Where a summons is not served in time to make the notice of the sittings of the court available information, it should be at once returned to the clerk. The latter shall thereupon add new notices of the time of two or more sittings and, forthwith, give or send the same to the bailiff for service. The proceeding may be repeated from time to time until due service is effected. In the case of a foreign court the summons shall be returned to the clerk of that court, to be dealt with by him in the same way.

Clerk's Emoluments.—Sec. 59.

A clerk is entitled to retain for himself, out of the yearly fees and emoluments of his office, all earnings up to \$1,000. This is held to mean the gross fees received.

Of the further fees and emoluments, in excess of \$1,000, and not exceeding \$1,500, he is entitled to retain 90 per cent.

Of the fees up to \$1,500, and not exceeding \$2,000, he retains 80 per cent.

Two thousand dollars, and not exceeding \$2,500, 70 per cent.

Two thousand five hundred dollars, and not exceeding \$3,000, 60 per cent.

Of all fees in excess of \$3,000, 50 per cent.

Subject to these provisions as to payment on *gross* income to the Provincial Treasurer, a clerk shall be entitled to retain each year his *net* income up to \$1,000. Of the further net income the following percentages are to be paid over.

On excess over \$1,000, and not exceeding \$1,500, 10 per cent.

On excess of \$1,500, not exceeding \$2,000, 20 per cent.

On excess of \$2,000, not exceeding \$2,500 30 per cent.

On excess over \$2,500, 50 per cent.

The distinction between the terms *gross* and *net* income will be observed. The clerk whose emoluments come up to the necessary figure pays on both.

The net income is arrived at by, in the first place, deducting the \$1,000, and next, deducting the percentage coming to the Provincial treasurer, from the gross amount of returns, under the Division Courts Act. Out of the balance the clerk is entitled to credit for any disbursements allowed him by the inspector. What is left is the net income, on which the second percentages are taken, as above.

These new provisions, with respect to net income, are contained in 57 Vic., cap. 9, amending 55 Vic., cap. 17.

Under the latter Act, the clerk was allowed to retain \$1,500 and disbursements, before deducting the percentages on the net emoluments. Now, as will be seen, the amount is fixed at \$1,000 and disbursements.

Not to Collect on Commission.—Clerks or bailiffs are not permitted to collect debts on commission, or to take any other fees than those provided by the tariff. Sec. 58.

Returns.

Section 60 directs that on the 15th of January in each year the clerk shall transmit to the Provincial Treasurer a duplicate of the return required by section 68 (returns to the inspector), and shall pay over such proportion of the fees as is required by sec. 59, and 57 Vic., cap. 9.

The inspector is obliged to insist upon a strict compliance with this provision of the law. The meeting of the Legislature generally takes place shortly after the date mentioned, and the returns are required, not only for his own department, but also for the Treasury department, in order to complete reports to be laid before the House.

When this is understood, clerks will be the better able to judge of the emergency of the case and of the annoying inconvenience to the departments when these returns are kept back. The neglect or delay of one clerk keeps back the whole report.

Other annual returns required to be made are :—

Of jury fund, to county treasurer.

Of committals, to the inspector.

The list of unclaimed moneys, required by the 49th section of the Act, shall be made under oath, and shall, in the month of January, be transmitted to the county attorney, together with the moneys (if any) therein mentioned.

The returns of bailiffs, under the 193rd Rule, at the opening of every court, of all warrants and executions.

Report to the judge at every sittings as to the sureties of himself and bailiff.

Powers of Court.—Secs. 73-74.

The court has power to grant relief or redress, either absolutely or conditionally, in any proceeding before it, including power to relieve against penalties, forfeitures and agreements for liquidated damages, as fully as in like cases in the High Court.

This extends to any defence or counter-claim, equitable or legal, unless the same involve matter beyond the jurisdiction of the court.

No privilege can exempt any person from suing or being sued in a Division Court. Judgment and execution therein shall be such as given in like cases in the High Court. Sec. 75.

The right to grant injunctions, and commit for disobedience, is held by the court.

Causes of Action Not to be Divided.

A cause of action cannot be divided for the purpose of bringing the same within the jurisdiction. No greater sum than \$100 can be recovered for the balance of an unsettled account.

Account Beyond Jurisdiction.—No action can be sustained where the unsettled account, in the whole, exceeds \$400. A cause of action cannot be divided for the purpose of jurisdiction. Sec. 77.

For Balance of Account.—Upon an action for balance of account the judgment shall be a full discharge of all demands in respect of the account. Sec. 78.

Certiorari.—Where it appears to any of the judges of the High Court that a case is one to be tried in a High Court, and the judge grants leave, the cause may be removed by *certiorari*, upon such terms as the judge may order, where the claim amounts to \$40 and upwards.

Where it appears in an action, otherwise of the proper competency of the Division Court, that such court has not cognizance thereof, from the title to land being brought in question, or from the validity of a devise, bequest, or limitation, under a will or settlement being disputed, the action shall not on that account be dismissed, but may, by writ of *certiorari*, be removed from the Division Court into the High Court, upon such terms as to payment of costs or other terms as the judge making the order thinks fit. 57 Vic., cap. 23, sec. 16.

Action in Court other than that Holden for the Division.

When an action is tried or transferred to any other court than that holden in the division in which the cause of action arose, such court shall have full jurisdiction in the premises. Sec. 80.

General Directions.

Actions may be brought in court of the division in which the cause of action arose, or in which defendant resides or carries on business. Secs. 81, 82, 83.

Against Foreign Corporation.—Where the defendant is a corporation having its head office in the Province, and the cause of action arose partly in one and partly in another division, plaintiff may bring his action in either. Sec. 84.

Where Debt Made Payable Out of the Province.—Where the debt exceeds \$100, and is made payable out of the Province, the action may be brought in any court, subject, however, to the place of trial being changed, upon application of one or more of the defendants. Sec. 85.

Change of Place of Trial—To procure such change, an order must be obtained from the judge of the county in which the action is brought.

For proceedings and directions, see section 86 and sub-sections 2 to 9, inclusive.

When action entered in wrong division. Sec. 87.

Suits By and Against Clerks and Bailiffs.

A clerk or bailiff may sue or be sued for any debt due to or by him, separately or jointly with any other person, in the court of any next adjoining division in the same county.

No clerk or bailiff shall bring an action in his own court. Sec. 88.

Proceedings may be continued in same court, if commenced before his appointment to office.

He may be sued in the court of an adjoining county, the place of sittings whereof is nearest to residence of defendant, without the county. Transcript of judgment against him may be sent there and enforced by bailiff of adjoining division. Sec. 89.

Actions By or Against Judge.

May be brought in the court of any county adjoining, and against stipendiary magistrates in an adjoining county or district. Sec. 90.

By Consent.—Any action within the jurisdiction may be tried and disposed of by consent of the parties in any Division Court. Sec. 91.

Foreign Service.—When required, the clerk must forward all summonses to the clerk of any other division for service. They shall be handed over by the latter to the bailiff of his court, whose duty it is to make return to the clerk from whom received. The clerk shall enter all such proceedings in a book to be kept by him for that purpose. Sec. 92.

Notices.

All notices must be in writing. Sec 93. Printed, engraved or lithographed, or otherwise traced or copied, will come under the designation of "written."

Partners.

One or more of several partners, jointly liable, and living in different divisions, may be sued, or when the other partners cannot be found, and judgment

may be obtained and execution issued against the persons served, notwithstanding the joint liability of the others not served or sued—reserving always to the person or persons against whom execution issues his or their right to demand contribution. Sec. 106.

Where the judge certifies that the demand proved was strictly a partnership transaction, the bailiff, in order to satisfy the judgment and costs and charges thereon, may seize and sell the property of the firm as well as that of the defendants who have been served. Sec. 107.

The transaction in such cases must be strictly one of partnership.

Action Against Non-resident.—By sec. 12, of 57 Vic. cap. 23, it is provided that when a claim may be entered or an action brought, or that any person may be sued in any Division Court, such action may be brought, notwithstanding that the residence of the defendant is, at the time of bringing the action, out of the Province; and such action may be brought in the court of the division in which the cause of action arose, and continued to completion in as full and effectual a manner as might have been the case if the defendant resided in the Province.

Adding Parties.—Sec. 108.

The judge may at any time after action commenced, upon the application of either party, and upon such terms as may appear to him to be just, order that the name of any party who ought to have been joined in the action as a defendant [primary debtor or garnishee] shall be added as a party defendant.

All persons so added, must be served with summons—the original having been first properly amended. The proceedings against such added defendant shall be deemed to have commenced from the date of the order making him a party defendant. If application made at the trial, judge may make order in a summary manner and may dispense with the service of a copy of the summons, if defendant, or his solicitor consent thereto, upon such terms as to costs as the judge shall think just. Sec. 108, sub-section 3.

Any two or more partners may sue or be sued in the name of the respective firms. Where partners are thus sued, the summons may be served on one or more of the partners. The affidavit of service shall state the name of the partner served.

Any party may at any time, before or after judgment, apply to the judge for an order directing a statement to be furnished of the names of all the partners in any firm which is a party to the action. Sub-section 4, section 108.

Where judgment is against partners, in the name of the firm, execution may issue in the following manner :—

Against goods of the partners.

Against the goods of a partner who has admitted being a member of the firm.

Against any person served as a partner who has failed to appear. Sub-section 5, section 108.

Upon the trial of an action against a firm, if the plaintiff is desirous of obtaining a judgment against the individual partners, other than the one served

with a copy of the summons, in addition to his judgment against the firm, he may procure the addition of the remaining partners as defendants under subsections 1 and 3, section 108, and thereafter proceed to judgment against them.

*Judgment By Default Where Specially Endorsed.—
Sec. 109.*

In proceeding by special summons, final judgment may be entered by the clerk where claim is not disputed, on the return of the summons, or at any time within a month thereafter, or for a portion of claim not disputed.

(2) But not until the summons and particulars, with an affidavit of due service of both, have been filed.

(3) The judge may set aside such judgment and permit the case to be tried, on sufficient grounds shown, on such terms as to costs, etc., as he may think just.

Execution may issue on judgment under this section forthwith.

When due proof has been given of service, as required by section 109, and final judgment has not been entered, the judge may give judgment against defendant by default, with the same consequences and effect as if plaintiff had proved his claim in open court. Sec 110.

Clerks should be careful to note the wording of Rule 117, as to entering judgment on return of special summons. "On the twelfth day after the service of the summons, where the return day is the

eleventh day after the service, and on the seventeenth day, where the sixteenth day after the day of service is the return day of such summons," is the language employed.

Unless otherwise ordered, no execution shall issue within 15 days from entering the judgment given at the trial.

Speedy Judgment.

Where the necessary affidavit is made, verifying the cause of action and stating that there is no defence, and the defendant is served with a notice of motion to show cause why the plaintiff should not have final judgment entered in his favor, the judge may, unless the defendant, by affidavit or otherwise, satisfy the judge that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend the action—make an order empowering the clerk to sign final judgment accordingly. Section 111 and subsections.

The judge, at any time before judgment actually entered, although the time for giving the notice disputing the plaintiff's claim has expired, may, on sufficient grounds shown, and on such terms as he thinks just, grant leave to the defendant to dispute the plaintiff's claim, in which case the requisite notice disputing the claim shall immediately be left with the clerk, and also sent to the plaintiff by prepaid letter through the post or otherwise. Sec. 112.

Withdrawal of Defence.

A defendant who has filed notice of defence in any action may, by notice in writing to the clerk, at least six days before the sittings, withdraw such defence and consent that judgment be entered against him. It is the duty of the clerk to notify the plaintiff by mail, and thereupon the latter shall be entitled to have judgment entered by the clerk as by default. Sec. 113.

The power of the clerk to enter judgment by default, under section 109, cannot be exercised until the return day of the summons. Under this section, it would appear to be vested in him as soon as the defence is withdrawn, though the return day may not have arrived.

When Notice Required—Sec. 113 (a).

In any case in which the defendant, primary debtor or garnishee has given notice that he disputes the plaintiff's claim, or any other notice of which the plaintiff should be informed before the trial, or in any case in which it has become the duty of the clerk to give notice to any party to a cause, of defence or admission, judge's order, or other matter, such notice must show the time and place of the sittings of the court at which the cause is to be heard.

Trial—Sec. 114.

Non-suit.—On the day of trial, the judge shall, on hearing defendant's answer to the action, without further pleading or formal joinder of issue, proceed, in a summary way, to try the cause and give judg-

ment. In case satisfactory proof is not given entitling either party to judgment, he may non-suit the plaintiff. The plaintiff may, before verdict, in jury cases and before judgment pronounced in other cases, insist on being non-suited.

If Appeal.—The other actions on the list and business of the court shall be disposed of before entering upon the trial of actions where the sum exceeds \$100 (which are to be placed at the foot of the list), unless the judge shall for special reasons order otherwise. The judge shall in such cases, when no agreement not to appeal has been signed and filed, take down the evidence in writing, and shall leave the same with the clerk ; but in the event of an application for a new trial it shall be forwarded to the judge for the purposes of such application. Sec. 115.

Listing Cases for Trial.—All suits for amounts exceeding \$100, whether commenced by attachment or not, must be placed at the foot of the list, unless the judge orders otherwise. The section leaves replevin suits and those personal actions where the amount claimed does not exceed \$60, to be placed on the list the same as before.

Agreement Not to Appeal.—If before the court opens, or if, without the intervention of the judge, before the commencement of the trial, there shall be filed with the clerk an agreement in writing, signed by both parties, no appeal shall lie. Sec. 116.

The clauses regulating appeals will be found in sections 148 and 153—and Rules 305, 310, 320, and 330.

If Defendant Does Not Appear.—On failure of the defendant to appear, the judge, on proof of service, may proceed with the hearing, and the order or judgment shall be final and valid. Sec. 117.

Judgment can only be entered by default on personal service being made.

Should summons for claim less than \$15 not be personally served, plaintiff would have to prove his claim. He must also do so in case of tort or trespass, and in actions in which the detailed particulars of claim have not been served.

Section 118 empowers the judge to adjourn the hearing if he thinks it conducive to the ends of justice to do so. In this he has a wide discretion under the section and under the rules.

If tried by a jury, judge may postpone trial. Sec. 119.

Any person may appear for any party in the cause as agent or advocate. Sec. 120.

Section 121, empowers the judge, whenever in his opinion justice requires it, to prevent any person from so appearing for the parties.

Tender of Payment.—If defendant intends to plead tender of a sum of money before action brought, in satisfaction of claim, he may do so, on filing his plea with the clerk, at least six days before the trial, and at the same time paying into court the amount. Notice of the plea and payment must be given by the clerk. Sec. 122.

Section 123 authorizes that said money be paid over to plaintiff, less \$1 to defendant for his trouble, in case the plaintiff does not prosecute the action. All proceedings shall be stayed, unless within three days after receipt of notice, plaintiff signifies, in writing, to the clerk, his intention of proceeding, notwithstanding such plea.

A plaintiff cannot get money lodged in court paid out, until the suit is determined—unless the judge otherwise orders.

If the decision be for defendant, plaintiff must pay his costs, to be awarded by the court, and the amount may be paid over to him out of the money paid in with his plea; or may be recovered in the same manner as any other money payable under a judgment of the court. If decision in favor of plaintiff, the full amount of the money paid into court shall be applied in satisfaction of his claim, and judgment for the balance and costs, according to the practice in other cases. Section 124.

Section 125 allows a defendant to pay money into court at any time, not less than six days before trial, together with plaintiff's costs up to the time of such payment.

Section 126 directs the clerk to give the necessary notice of payment. Proceedings shall be stayed, unless within three days plaintiff signifies his intention of proceeding for the remainder of his demand, in which case the action proceeds as if brought originally for such remainder.

If the plaintiff recovers no further sum than the sum paid into court, he shall pay the defendant his costs. Sec. 127.

Set-off.—In case of set-off, or any defence under the statute, six days' notice before trial must be given. Sec. 128

No evidence of set-off, other than such as is contained in the particulars of set-off delivered, can be given. Sec. 129.

The judge has, of course, the power to allow an amendment.

If the set-off be proved to exceed the amount due the plaintiff, the latter shall be non-suited, or the defendant may elect to have judgment for the excess, provided the amount is within the jurisdiction. If the excess be greater than the jurisdiction, the judge may adjudicate that an amount of the set-off, equal in amount found due to the plaintiff, satisfy the claim. Such adjudication shall be no bar to the recovery by the defendant of the residue of the set-off.

Witnesses and Evidence.—Sec. 131.

Parties to an action may obtain subpœnas from the clerk of any court in the county, with or without a clause for the production of books, writings, etc., requiring any witnesses resident within the Province, or served with the subpœna therein, to attend at a specified court or place before the judge, or any arbitrator appointed by him, and the clerk, when requested by any party to an action, or his agent, shall give copies of such subpœna.

A party who desires the attendance of witnesses should subpœna them. The duty of attending is created by the service, and by that means only. A witness, ordinarily resident in a foreign country, may be served here with a subpœna, and is liable for non-attendance. If the conduct money paid him is insufficient, he must object at the time of the payment.

Any number of names may be inserted in a subpœna, and service thereof may be made by any literate person; and proof of service and tender of payment of expenses may be made by affidavit. Proof may be received by the judge either orally or by affidavit. Sec. 132.

Persons refusing or neglecting, without sufficient cause, to obey the subpœna, and those in court, called upon to give evidence, who refuse to be sworn, or to give evidence, shall be subjected to such fine (not exceeding \$8) as the judge may impose; and also to imprisonment for any term, not exceeding ten days. The whole or part of fine shall be applicable towards indemnifying the party injured by such refusal or neglect. Sec. 133.

Any person in court may be called upon to give evidence in a case. But if a witness were subpœnaed and was not paid his fees, and he attended notwithstanding, he could not be called upon to give evidence by the party who had not subpœnaed him, unless his witness fees were first paid.

Commission to Take Evidence.

In case the plaintiff or defendant in an action wants the testimony of a person residing without the limits of the Province, the judge, upon application,

and after hearing the parties, may order the issue of a commission out of the court, to a commissioner, for the examination of such person. Sec. 135.

A copy of interrogatories should be annexed to the commission.

Section 136.—No order shall be made for the issue of a commission to take the evidence of the party applying for it, or any person in his employment, unless, in the opinion of the judge, a saving of expense will thereby be effected, or unless it is clearly made to appear that the person is aged, infirm or unable from sickness to appear as a witness.

The judge may appoint a suitable person to take the evidence. A copy of the order, with two days' notice of the time and place of examination, shall be served upon the opposite party. The evidence shall be taken on oath, and reduced to writing, and signed by the witnesses, and shall be transmitted to the clerk of the court to be used on the trial. The costs (to be fixed by the judge) shall, in the first instance, be paid by the party applying for the order, and afterwards as the judge may direct. Sec. 137.

There is no provision for the production of books, papers, etc., on such examination.

Under section 138, an order may also be obtained for the examination of a witness who resides in a distant part of the Province, and at a great distance from the place of trial, if it appear clearly that his attendance cannot be procured, or that the expense would be out of proportion to the amount involved.

Books of Account, Affidavits, Etc., as Evidence.—Sec. 142.

Under this section, in an action for an amount not exceeding \$20, the judge, on being satisfied of their general correctness, may receive the plaintiff's books in evidence, or in case of a defence of set-off, or of payment, as far as the same extends to \$20. He may also receive as evidence the affidavit or affirmation of any party or witness in the action, resident without the limits of his county. But he may require such witness, or any party in a cause, to answer interrogatories upon oath.

Sec. 143.—All affidavits may be sworn before the judge, or before the clerk, deputy clerk, or before a notary public or commissioner for taking affidavits in the High Court.

An affidavit taken out of the Province would, of course, be valid if taken before any other proper authority.

Judge's Decision—Sec. 144., and 57 Vic. cap. 23, sec. 4.

This section, as amended, now reads : The judge, in any case heard before him, shall, openly in court and as soon as may be after the hearing, pronounce his decision. But if he is not prepared to pronounce a decision instantly, he may postpone judgment *until it is convenient for him to give the same, when he shall forthwith send the same to the clerk of the court, who shall, upon the receipt thereof by him, forthwith enter the judgment and notify the parties to the suit of the same ; and such judgment shall be as effectual as if rendered in court at the trial.*

The words printed in italics comprise the amendment.

Heretofore the parties were obliged to attend, at an hour and a day appointed by the judge, for the delivery of his judgment and hearing it read by the clerk. The amendment does away with this expense.

Sec. 145.—The judge may order the time or times and the proportions in which any sum and costs recovered by judgment shall be paid. Unless otherwise ordered, execution shall not issue on any such judgment within fifteen days after the entering; and at the request of the party entitled thereto, he may order the same to be paid into court. And the judge, upon the application of either party, within fourteen days after the trial, and upon good grounds being shown, may grant a new trial, upon such terms as he shall think reasonable, and in the meantime stay proceedings.

New Trial—Staying Proceedings.—Sec. 146.—Rule 283,
(a), (b), (c), (d), (e), (f).

Upon application for a new trial, the judge, instead of granting a new trial, may pronounce the judgment which in his opinion ought to have been pronounced at the trial, and may order judgment to be entered accordingly,

Application for a new trial may be made *viva voce*, and determined on the day of hearing, if both parties be present; but if made when both parties are not present, it shall be in writing, and shall show briefly the grounds upon which it has been made, which grounds, if matter of fact requiring proof, shall be

by affidavit. A copy of the application and of the affidavit must be served by the party making the same on the opposite party, if within the division, or if without the division, by the clerk, who shall, on receiving the fees and necessary postage, transmit the same forthwith.

The application and affidavits (if any), together with an affidavit of the service thereof on the clerk, or on the opposite party (as the case may be), shall be delivered to the clerk within fourteen days after the day of trial. Upon receiving the necessary postage, he is to transmit to the judge, with a copy of the original claim and other requisite papers. This shall operate as a stay of proceedings until the judge's final decision.

The clerk, after receiving such papers, shall delay for six days forwarding the same to the judge, to enable the opposite party to answer the same in writing or by affidavit.

If the application be refused, or if the party applying shall fail to comply with the terms imposed, the proceedings in the suit shall be continued as if no such application had been made. The judge may hear the parties in court. If a new trial be granted, the suit shall be tried at the next sittings of the court, unless the judge shall otherwise order.

The judge may make it a condition that the new trial shall take place before a jury, whether the first trial took place before a jury or not. But if either party required a jury to try the case, in the first instance, he shall be entitled to another jury, upon

depositing the necessary fees for summoning such jury.

Section 148.—An appeal lies to the Court of Appeal, where the sum in dispute exceeds \$100.

An appeal shall also lie from the decision of the judge in all actions in which the parties consent to an appeal, and in interpleader where the amount exceeds \$100, or where the damages awarded exceed \$60.

An appeal is allowed to a garnishee.

The judge, upon the application to appeal, may stay proceedings for a time, not exceeding ten days from the day of giving judgment on the application for a new trial, in order to afford the party time to give the required security to enable him to appeal. Sec. 149.

(1). The security is to be by bond, from two sureties furnished by the appellant in \$100, or such smaller sum as the judge may direct, conditioned that the appellant shall abide the decision of the court and pay all sums of money and costs, as well of the action as of the appeal, or by paying into court \$50 or such smaller sum as the judge may direct.

In case security is given by deposit of money, the money shall remain in court as security for the payment of amount awarded and costs.

Upon application for a new trial, in any cause wherein either party may appeal, each party shall leave with the judge the name of some person, resident within the county town of the county in which the case had been tried, upon whom the notice

of appeal and all other papers may be served. In case of failure to do so, all papers may be served upon the clerk, where the trial was had, or left at his office. The clerk shall mail all such papers to the person entitled to same. Sec. 150.

It is provided by section 151 that the clerk furnish a duly certified copy of the proceedings and of the evidence, notes of the judge's charge, judgment or decision and all affidavits, etc., filed in the cause, affecting the question raised by the appeal. He shall also, when required, furnish the respondent with a duplicate copy, or such portion thereof as may be required. The fee for this service is provided in the tariff, item 9.

The appellant shall, within two weeks after the approval of the security, or deposit being paid into court, or at such other time as the judge may order, file the certified copy with the registrar of the Court of Appeal, and shall thereupon forthwith set down the cause for argument before a judge of the said Court of Appeal, giving the required notice to the respondent, at least seven days before the day for which the same is set down for hearing.

The appeal may be heard and disposed of by a single judge, who has power to dismiss or give judgment, or make any other order the law requires, and shall award costs in his discretion. Sec. 152.

The costs taxable, as between party and party, upon an appeal, shall be the actual disbursements, and no greater amount, over and above actual disbursements, than \$15, inclusive of counsel fee. The

costs of such appeal, as between solicitor and client, shall be taxable on the County Court scale. Sec. 153.

The Judicature Act does not apply to appeals made under the Division Courts Act.

Juries.—Secs. 154, 155, 156.

Either party may require a jury, in tort or replevin, where the sum or the value of the goods exceeds \$20, and in all cases, where the amount sought to be recovered exceeds \$30. Sec. 154.

The right to have a jury summoned under this section depends upon whether the suit is one for damages exceeding \$20 in tort or replevin, and upwards of \$30 in all other actions, and also upon the giving of notice and the payment of the proper fees, as required by section 156. If these requirements have been complied with, and a jury has been properly demanded, the judge cannot properly try the case without a jury.

Either party to an interpleader issue may require a jury to be summoned to try the issue. Notice, within five days, after the day of service of summons, shall be given the clerk, or left at his office, requiring a jury, and shall at the same time *deposit with the clerk, as towards costs in the cause*, the proper fees for the expenses *attending the summoning* of the jury, and thereupon a jury shall be summoned. Sec. 155.

The words printed in italics were introduced in the amending Act, 57 Vic., cap. 23, sec. 5.

Sections 115, 116 and 208 shall extend and apply to all interpleader issues.

Sec. 156.—In case the plaintiff requires a jury to be summoned to try the action, he shall give notice in writing to the clerk, at the time of entering his claim, and shall at the same time *deposit with the clerk, as towards costs in the cause*, the proper fees for expenses *attending the summoning* of such jury; and in case the defendant requires a jury, he shall, within five days after the day of service of the summons on him, give to the clerk, or leave at his office, the like notice in writing, and shall, at the same time, *deposit with the clerk* the proper fees as aforesaid; and thereupon, in either of such cases, a jury shall be summoned.

The words printed in italics were inserted in the amending Act, 57 Vic., cap. 23, sec. 6.

A plaintiff must demand a jury at the time of entering the claim.

Costs of Summoning—Anything heretofore considered ambiguous in the wording of these sections, as to the costs of summoning a jury being “costs in the cause,” has been made clear by sections 5 and 6 of the Amending Act of 1894.

The amount lodged with the clerk towards the summoning, is expressly declared here to be as a “deposit towards costs in the cause.” As such it has been always regarded and acted upon in the inspector’s department, in giving instructions to officers of the court. Either party may require a jury, in tort or replevin, where the sum or value of the goods exceeds \$20, and in all other cases where the amount sought to be recovered exceeds \$30. The notice

in writing, must be given, and is a necessary condition. And these requirements complied with, the language of the statute that "a jury *shall* be summoned," is imperative.

To have a jury is as much the right of a plaintiff or defendant, as is the right of either to enter or defend an action. In both cases there are certain requirements to be observed in order to secure a trial. The making of a deposit for costs is one of them. The successful party before the judge gets his costs as a rule. Why not the successful party before a jury? To hold that a party demanding a jury "should pay for the luxury," whether he lose or gain the suit, cannot, it is submitted, be the true legal construction of these sections of the Act. The contention for such a construction, is a contention to tax the suitor for exercising the undoubted right secured him by law, and to seek to hinder him from resorting to a proceeding made part of the legal machinery for obtaining a trial of his cause.

Formerly, a jury was not allowed in interpleader cases. The issue in such cases is whether or not the property was, *at the time of the seizure*, the property of the claimant as against the execution or attaching creditor. Should the claimant be in possession at the time of the seizure, the onus is upon the execution creditor to shew that the goods were the goods of the debtor. Though the debtor may be estopped from claiming the goods as against the claimant, the execution creditor may shew that the claimant has no valid title.

Under section 269, and sub-sections, will be found particulars as to parties to an interpleader issue.

At one time, it was believed that the withdrawal of a juror operated as a legal determination of the action. Such is not the case. It is no determination, except in this sense of the word, that unless something very special happens, the court will hold the parties to their understanding, and will stay any further proceedings in the action.

And it is doubtful if the withdrawal of a juror has any effect in a Division Court action.

The clerk is not bound to accept the notice for a jury, nor to act on it, unless the expenses are pre-paid, and not only of his own fees in connection with the work, but also those of the bailiff.

Jurors.—Unless exempted by *The Jurors' Act*, every person whose name appears on the last published voters' list of any municipality, partly or wholly situated within the limits of any division, and who resides within the said division, and whose name is marked "J," as provided in section 23 of the said Act, shall be liable to serve as a juror for the court in such division. Sec. 157 and 52 Vic., cap. 12, s. 17.

The jurors to serve at any Division Court shall be residents of the said division. . . . They shall be summoned in rotation, beginning with the first of such persons in such voters' list who resides within the division. If there be more than one municipality, partly or wholly, in the division, beginning with that in which the court is held, and then proceeding to that one of the other lists which contains the greatest

number of such persons' names, and so on until all the lists have been gone through, after which they may be gone through again in the same order. But if at any time it shall appear to the judge that the cost of summoning a jury is excessive, by reason of the residences of the persons liable to be selected in the ordinary course being in a distant portion of the division, he may order the clerk to commence at the first name marked "J" upon any of the lists Sec. 159.

Section 159 obliges the clerk of the municipality within the division to furnish the clerk with a copy of the voters' list.

Summons must be served at least three days before the court, either personally or by leaving same at the residence of the juror. Not less than twelve persons liable to serve must be summoned. The clerk shall issue summons, and at least twelve copies. Summons must be returned to the clerk with the service thereof duly verified by the oath of the bailiff serving the same. Sec. 160.

Either of the parties to a cause shall be entitled to his rightful challenge against the jurors, in like manner as in other courts. Sec. 161.

The Jurors' Act declares the right of peremptory challenge to any four of the jurors drawn to serve on the trial of a cause.

Sec. 162 sets forth the penalty, not exceeding \$4, for disobedience of the summons.

Sec. 163. That service as a juror at a Division Court does not exempt from serving in any court of

record, and that no person can be compelled to serve who is exempted by law from serving as a petit juror in the High Court.

By section 164 the clerk who neglects or refuses to furnish the voters' list may be summoned before the next sitting of the court to show cause.

Section 165 authorizes the judge to enquire into the neglect or refusal ; he may give further time, or he may impose a penalty of \$20, and may make such order for the payment by the clerk of the municipality of the costs as may seem meet.

Section 166 describes how the causes to be heard by the judge alone shall be set down for hearing, in a separate list from the list of causes to be tried by a jury—which two lists shall be severally called “ The Judge's List,” and “ The Jury List.” The causes shall be set down in the lists in the order in which they were in the first instance entered with the clerk—except where the judge sees sufficient cause for proceeding differently.

Five jurors shall be empanelled and sworn to try the cause, and the verdict of every jury shall be unanimous. In the event of the panel being exhausted before a jury is obtained, the judge may direct the clerk to summon from the body of the court a sufficient number of disinterested persons to make up a full jury. Persons so summoned—saving all lawful exceptions and right of challenge,—sit and act as jurors as fully as though they had been regularly summoned. Sec. 167.

Provision is also made for *tales*. The same rights to the parties would exist in regard to the further jurors.

By section 168 the judge may order a jury to be empanelled to try any disputed fact. The judge may give judgment on their verdict, or may grant a new trial on application of either party, in the same way as under similar circumstances new trials are granted in other cases on verdicts of juries. *And each juror so called and sworn shall be paid the sum of ten cents; the moneys so paid shall be taxed as costs in the cause.*

The part of this section printed in italics is an amendment added by 57 Vic., cap. 23, sec. 7.

If in any case the judge is satisfied that the jury, after having been out a reasonable time, cannot agree upon their verdict, he may discharge them and adjourn the cause until the next court, and order the clerk to summon a new jury for that court—unless the parties consent that the judge may render judgment on the evidence already taken. Sec. 169.

Fees for Jury Fund.

By section 170 there shall be paid to the clerk of the court, in addition to all other costs or jury fees now payable, on every action entered—

Where the claim exceeds \$20 but does not exceed \$60—3 cents ;

Where the claim exceeds \$60, but does not exceed \$100—6 cents ;—

And where the claim exceeds \$100—25 cents.

These fees shall be taxed and allowed as costs in the cause.

On or before the 15th day of January, in each year, every clerk shall return to the treasurer of his county a statement under oath, showing the number of actions originally entered in his court during the previous year, in which payments were receivable under the foregoing scale of jury fees. He shall, with the statement, pay over the sums received, together with all other moneys which he shall have received for jurors' fees during the year. The treasurer is required to keep an account of all moneys so received by him, under the head of "Division Court Jury Fund."

County treasurers would do well to compare the returns so made with those given in the annual report of the inspector, in order to correct errors or discrepancies.

Copies of the annual report are regularly mailed, when printed, each year, to county treasurers from the inspector's department.

In cities, which include one or more divisions and no other fraction of a division, the clerk shall make the return and payment to the treasurer of such city, who shall keep an account in the same way as provided in the case of county treasurers; and shall on the presentation of the certificate of the judge, forthwith repay to the clerk of the court the jurors' fees paid by him. Sec. 171.

The same returns are also to be made as under section 170.

The clerk shall pay to every person who has been summoned as a juror, and who attends during the sittings of the court for which he has been summoned, and who does not attend as a witness in any cause, or as a litigant in his own behalf, the sum of \$1. The presiding judge shall certify to the treasurer and shall deliver the certificate to the clerk, and upon presentation thereof the treasurer shall forthwith pay the clerk, or his order, the amount which the clerk shall have paid, as appears by the certificate, to the jurors.

In the case of cities other than those provided for in sec. 171, and towns separated from the county, the amounts paid in by the clerks of courts in such cities and towns, and the amount paid in by the county treasurer to the clerks of such courts for jury fees, shall be taken into account in settling the proportion of the charges to be paid by the city or town towards the costs of the administration of justice. Sec. 172.

Garnishment of Debts. Sec. 173.

When a debt or money demand, of the proper competence of the court, and not being a claim strictly for damages, is due and owing to one party from another, the party to whom the debt is due, designated, the primary creditor, may attach and recover any debt due or owing his debtor—designated the primary debtor—from any other party—called the garnishee—or sufficient to satisfy the claim of the primary creditor, subject always to the rights

of other parties to the debts owing from such garnishee.

To be the subject of garnishment proceedings before judgment, there must be the following requirements :—It must be a debt or money demand of the proper competence of the court—not strictly for damages—and it must be due and owing one party from another.

No debt due or accruing to a mechanic, workman, laborer, servant, clerk or employee, for or in respect of his wages or salary, shall be liable to seizure or attachment under the Act,—or under any other act relating to the attachment or garnishment of debts, unless the debt exceeds the sum of \$25, and then only to the extent of the excess. Sec. 174.

In section 175 an exception is made. In any case where the debt has been contracted for board or lodging, and in the opinion of the judge, the exemption of \$25 is not necessary for the support and maintenance of the debtor's family ; or where the debtor is unmarried and has no family depending upon him for support.

Sec. 176.—In all cases where a defendant, primary debtor or garnishee intends to contest the jurisdiction of the court, he shall leave with the clerk, within eight days after the service of the summons (where the service is required to be ten days before the return), or within twelve days after the day of such service (where the service is required to be 15 days before the return), a notice to the effect that he disputes the jurisdiction of the court. The clerk

shall forthwith give notice thereof to the plaintiff, primary creditor, or their solicitor or agent, in the same way as notice of defence is now given. In default of notice, the jurisdiction shall be considered as established and determined, and all proceedings may thereafter be taken as fully and effectually as if the action or proceeding had been properly commenced in such court. The notice must be in writing. Prohibition to a Division Court shall not lie in such action from any court whatever, where the notice disputing the jurisdiction has not been given.

Section 177.—Where the debt sought to be garnished is for wages or salary, there shall be upon or annexed to the summons served on the garnishee a memorandum showing the residence of the primary debtor, and the nature of his occupation in the service of the garnishee at the time of the issuing of the summons (if then in such service), and also stating whether the debt, alleged or adjudged to be due by the primary debtor to the primary creditor, was or was not incurred for board or lodging; and in the absence of such last-mentioned statement, the said debt may be presumed by the garnishee not to have been incurred for board or lodging.

(2) *If the debt is alleged or adjudged to be due by an unmarried person, having no family depending on him for support, a statement to that effect shall be upon or annexed to the summons served on the garnishee; and in the absence of such statement, such unmarried person may be presumed by the garnishee to have a family depending on him for support.*

The paragraph printed in italics (sub-section 2), was added by sec. 17, 57 Vic., cap. 23.

When the Creditor's Claim is a Judgment.—Sec. 178.

After judgment has been recovered, application may be made to the judge for an attaching order. The primary creditor makes an affidavit that such judgment had been recovered, specifying the time when, and that the whole, or some part, and how much thereof, remains unsatisfied, and that deponent has reason to believe, and does believe, that some one or more parties (naming them) is or are within the Province, and is or are indebted to the primary debtor. The judge thereupon makes the order to the effect that all debts owing to the primary debtor, whether due or not due, be attached to satisfy the judgment.

In a garnishment proceeding by way of attaching order, it is necessary that the garnishee should be resident within the Province. A company having its chief place of business out of the Province could not therefore be affected by an attaching order.

The service of the order on the garnishee shall have the effect (subject to the rights of other parties) of attaching and binding in his hands all debts then owing from him to the primary debtor, or sufficient thereof to satisfy the judgment; and a payment by the garnishee into the court or to the primary creditor of the debt so attached, to the extent unsatisfied on the judgment, shall be a discharge to that extent of the debt owing from the garnishee to the primary debtor. Sec. 179.

The service of this order should, if possible, be personal. Substitutional service could not be ordered of process upon a foreign corporation.

By section 180, any payment made by the garnishee, after service on him of the order, to any one other than the primary creditor, or into court, to satisfy the judgment, shall, to the extent of the primary creditor's claim, be void, and the garnishee shall be liable to pay the same again.

Payment into court will protect the garnishee.

Sec. 181.—Whether such attaching order is or is not made, the primary creditor may cause to be sued out of the court for the division in which the garnishee resides or carries on business, a summons, in the form prescribed by the general rules, upon or annexed to which shall be a memorandum showing the names of the parties as designated in the judgment, the date when, and the court in which it was recovered, and the amount unsatisfied, which summons shall be returnable either at an ordinary sittings of the court, or at such other time and place (to be named therein), as the judge may permit or appoint, either by a general order for the disposal of such matters or otherwise.

Sec. 182.—In the proceedings under the preceding section, where the garnishees are likewise a body corporate, not having their chief place of business within the Province, then the summons mentioned shall be issued from the court in which the judgment has been recovered, and shall be served upon the agent of such body corporate,

whose office as such agent is either within the division in which judgment had been recovered or nearest thereto.

A copy of the summons and memorandum shall be duly served on the garnishee, or if there be joint garnishees, then on such of them as are within the reach of the process, at the time and in the manner required for the service of summonses in ordinary actions for corresponding amounts, and also on the primary debtor, if thought advisable, or if required by the judge. Sec. 183.

Sec. 184.—At the hearing of the summons, or at any adjourned hearing, on sufficient proof of the amount owing by the garnishee to the primary debtor, and no sufficient cause appearing why it should not be paid and applied in satisfaction of the judgment, the judge may give judgment against the garnishee for the amount, or sufficient thereof to satisfy the judgment; and execution against the garnishee to levy the same may issue thereon as if of course, if due, or when, and as it becomes due, or at such later period as the judge may order.

Where the Primary Creditor's Claim is not a Judgment.—Sec. 185.

Where a judgment has not been recovered for the claim, the primary creditor may cause a summons to be issued out of the court in which the garnishee lives or carries on business, upon or annexed to which shall be a memorandum showing the names of the primary creditor, the primary debtor and the garnishee, and the particulars of the claim of the

primary creditor, which summons shall be returnable as required by section 181.

(2) In the event of the garnishee being a body corporate, not having their chief place of business within the Province, then the summons shall issue out of the court for the division in which the cause of action arose, and shall be served upon the agent of the body corporate, whose office, as such agent, is nearest the place where the cause of action arose.

(3) Every person who, within Ontario, transacts or carries on any business for such body corporate, shall, for the purpose of this section, and of section 182, be deemed the agent thereof.

Sec. 186 provides that a copy of the summons and memorandum shall be duly served on the garnishee, or, if there be joint garnishees, then on such of them as are within reach of the process, at the time and in the manner as required in ordinary cases; and also, if practicable, on the primary debtor, unless the judge, for sufficient reason, dispenses therewith.

Sec. 187.—If in such case the primary debtor has been duly served with a copy of the summons and memorandum, judgment may be given against him at the hearing, for the primary creditor, for the whole, or such part of the claim as is sufficiently proved; and execution may afterwards issue thereon as in other cases. Whether such judgment is or is not given, the judge, on sufficient proof of the debt due and owing from the primary debtor, and also of the amount owing him from the garnishee, may then, or at an adjourned hearing, give judgment

against the garnishee for the amount so found due, to the extent of the amount so found due from the primary debtor, which sum the garnishee shall pay into court, or to the primary creditor towards satisfaction of the claim, or in default thereof, execution may issue to levy the same forthwith, or at such later period as the judge may direct.

In cases in which the judgment shall have been recovered against a garnishee under sections 184 and 187, such garnishee shall be liable to be examined as a judgment debtor, under sections 235 to 248, inclusive. 57 Vic., cap. 23, sec. 18.

General Provisions.

Under section 188, whether the claim of the primary creditor is a judgment or not, the primary debtor, the garnishee and all other parties in any way interested in or affected by the proceeding, shall be entitled to set up any defence, as between the primary creditor and the primary debtor, which the latter would be entitled to set up in an ordinary action, and also such defence, as between the garnishee and the primary debtor, and may also show any other just cause why the debt sought to be garnished should not be paid over or applied in or towards the satisfaction of the claim of the primary creditor.

Defences in Garnishee Proceedings.—A primary debtor or garnishee who desires to set up a statutory or other defence, or set off, or to admit his liability, in whole or in part, shall file with the clerk the par-

particulars of the same, or an admission of the amount owing by either, within eight days after service of the summons.

The clerk shall forthwith send by mail to each of the parties to the action a copy of such defence, set off or admission. The primary creditor may file with the clerk a notice that he admits the defence or set off, or accepts the liability of admission as correct. A copy of the notice shall be sent by mail forthwith to the garnishee. In the absence of any such notice, the judge may, in his discretion, give judgment against such primary debtor or garnishee. In the absence of notice, the garnishee shall not be bound to attend at the trial, and the sum admitted shall be taken to be the correct amount of his liability, unless the judge shall otherwise order; in which latter case, the garnishee shall have an opportunity of attending at a subsequent date, and being heard before judgment is given against him.

The costs of all notices required to be given under this section shall be costs in the cause, and in no case shall be payable by the garnishee, unless specially ordered by the judge. Sec. 188, sub-secs. 2, 3, and Rule 86.

Service of the summons upon the garnishee binds the debt until the hearing. Sec. 189.

Sec. 190.—If judgment be given for the primary creditor against the garnishee, the debt garnished shall, unless the judge otherwise orders, continue bound in the hands of the garnishee to satisfy the claim of the primary creditor. Payment into court

shall be a discharge to the garnishee, as between him and the primary debtor. Any other payment except to the primary creditor or into court would be void and leave the garnishee liable.

The garnishee shall not be liable for costs of proceeding, unless so far only as shall have been occasioned by setting up a defence, which he knew, or ought to have known, was untenable; and subject to this provision, the costs of all parties shall be in the discretion of the judge. Sec. 191.

Costs to Primary Creditor.—Sec. 192. The judge, in any case brought to garnish a debt, may, in giving judgment on behalf of the primary creditor, award costs of the proceeding to the primary creditor out of the amount found due from the garnishee to the primary debtor.

Conditions before giving Judgment.—Sec. 193. Judgment cannot be given until summons and memorandum, with an affidavit of service, are filed.

Money must be due from garnishee before execution issues.—No execution shall issue to levy money owing from garnishee until the money is due. Sec. 194.

Application for Order to Discharge Claim of Primary Creditor.—Any party entitled or interested in any money debt, attached or bound in the hands of a garnishee, may apply to the judge for an order to the effect that such money or debt be discharged from the claim of the primary creditor. Such an application and the like order may also be made, if

the judge thinks fit, after the money has been paid over by the garnishee, in which case all parties shall be remitted to their original rights in respect thereto, except as against the garnishee having already paid the debt or money, whose payment shall not be affected thereby, but shall be and remain an effectual discharge to him. Sec. 195.

Security may be Ordered.—If the judge, on the hearing of a summons, or on special application for the purpose, thinks proper, he may before giving judgment against the garnishee, or at any time before the actual payment by the latter, order such security to be given as may be approved of by himself or the clerk, for the repayment into court to abide the judge's order,—in case an order has been made for repayment. Sec. 196.

Bond to be Taken.—(2) The bond shall be to the clerk by his name of office, and shall enure for the benefit of all parties interested, and may by order of the judge, and on such terms as to indemnity against costs as he may impose, be sued in the name of the clerk.

Claimant other than Primary Creditor.—In case any one, other than the primary creditor or primary debtor, claims to be entitled to the debt owing from the garnishee, by assignment thereof or otherwise, the judge may enquire into and decide upon the claim. Sec. 197.

Judge may Postpone or Adjourn.—Section 198 empowers the judge to postpone or adjourn the proceedings from time to time, to allow time for giving

omitted notices of defence, or to produce further evidence, or for any other purpose. He may require service on and notice to other and additional parties, and may prescribe and devise forms for any proceeding, and may amend all summonses, memoranda, claims, notices and other papers and proceedings and copies thereof.

Debt Attachment Book to be Kept.—Section 199 directs that clerks of courts shall keep in their respective offices a debt attachment book in the form prescribed in the general rules, in which shall be correctly entered the names of all parties, the date, statements, amounts, and other proceedings, etc. Copies of entries therein may be taken by any one free of charge.

Arbitration.

The judge may in any case, with the consent of both parties, order the same to be referred to arbitration—to such person or persons, and in such manner and on such terms as he shall think reasonable and just. Or the parties to the action may by writing agree to refer the matters in dispute to the arbitrament of a person named in the agreement—which shall be filed with the clerk and be entered on the procedure book as notices are entered. Sec. 200.

Reference not Revocable by either Party.—The reference shall not be revocable by either party, except by consent of the judge. Sec. 201.

Entering Award.—The award shall be entered as the judgment in the cause, and shall be as binding and effectual as if given by the judge. Sec. 202.

Award may be set aside.—Judge may set aside award, upon application to him within fourteen days of the entry, or may, with the consent of both parties, revoke the reference, and order another reference to be made. Sec. 203.

Administering Oath.—Any of the arbitrators may administer an oath or affirmation to the parties and all other persons examined before them. Sec. 204.

Confession of Debt.

A bailiff or clerk, before or after action commenced, may take a confession or acknowledgment of debt from a debtor or defendant desirous of executing the same. It shall be in writing, and witnessed by the clerk or bailiff at the time of the taking thereof. And upon the production of same to the judge, and its being proved by the oath of the clerk or bailiff, judgment may be entered thereon. Sec. 205.

Affidavit.—The affidavit shall state that the party making it has not received, and that he will not receive, anything from the plaintiff or defendant, or any other person, except the lawful fees for taking the confession, and that he has no interest in the demand sought to be recovered. Sec. 206.

Costs.

The cost of any action or proceeding, not otherwise provided for, shall be paid by or apportioned between the parties in such manner as the judge thinks fit. Where the plaintiff does not appear in person, or by some one in his behalf, or appearing does not make

proof of his demand to the satisfaction of the judge, he may award to the defendant such costs and such further sum of money, by way of satisfaction for his trouble and attendance, as he thinks proper—to be recovered as in other cases. And in default of any special direction, costs shall abide the event of the action. Execution may issue for recovery thereof in like manner as for any debt adjudged in the court. Sec. 207.

(2) In all actions brought in which the plaintiff fails to recover by reason of the court having no jurisdiction, the judge shall have jurisdiction over the costs of the action or proceeding, and may order by and to whom the same shall be paid. The recovery of the costs awarded may be enforced by the same remedies as the costs of actions or proceedings within the proper competence of the court are recoverable.

Counsel Fee.—Sec. 208. Where in a contested case for more than \$100, a counsel, solicitor or agent has been employed by the successful party in the conduct of the cause or defence, the judge may in his discretion direct a fee of \$5—to be increased according to the difficulty and importance of the case, to a sum not exceeding \$10—to be taxed to the successful party, and the same when allowed shall be taxed by the clerk and added to the other costs.

Rule 288 declares that where an agent has been employed, the judge shall not direct a fee to be taxed, unless such agent is a barrister or solicitor.

Where the defendant, having disputed the plaintiff's claim, afterwards, and before the opening of the court, confesses judgment, or pays the claim so short a time before the sitting of the court that the plaintiff cannot in the ordinary way be notified thereof, and without such notice the plaintiff *bona fide* and reasonably incurs expenses in procuring witnesses, or in attending at court, the judge may, in his discretion, order the defendant to pay such costs, or such portion thereof as to him may seem just. Sec. 209.

No costs shall be recoverable in an action for recovery of a sum awarded by judgment without the order of the judge of the court in which the action is brought, on sufficient cause shown. Sec. 210.

Proceedings Not to be Set Aside for Matter of Form.
Sec. 211.

No order, verdict, judgment, or other proceeding had or made concerning any matter or thing shall be quashed or vacated for any matter of form. R. S. O., 1887, c. 47, s. 155.

Judgment and Execution.—Sec. 212.

When the judge makes an order for the payment of money, in case of default in the payment of same or any part thereof, the party in whose favor the order has been made may sue out execution against the goods and chattels of the party in default, and thereupon the clerk, at the request of the party presenting the order, shall issue under the seal of the court an execution to one of the bailiffs, who by virtue thereof shall levy by distress and sale of the

goods and chattels of such party, being within the county within which the court was holden, such sum of money and costs (together with interest thereon from the date of the entry of the judgment) as have been so ordered and remain due, and pay the same over to the clerk.

Unless otherwise ordered, no execution can issue within fifteen days from entering the judgment given at the trial. R. S. O., 52 Vic., cap. 12, s. 16.

By a judgment is here meant the final determination of a cause.

212 (a)—Where a judgment or execution has been or shall hereafter be filed with any sheriff under *The Creditors' Relief Act*, or a certificate for any claim within the jurisdiction of the court, and the same is not paid in full, and the sheriff is unable to make the money thereon, the creditor may obtain a return thereof from the sheriff according to the facts, and file the same with the clerk of the court in which the judgment was recovered, or in the place where the cause of action arose, or the debtor, or one of the debtors, if more than one, resided, and the clerk enter the same in his proper books, and it shall thereupon become a judgment of the court for the unpaid balance due thereon as appearing by the sheriff's return, and the claim may be enforced in the same manner as any other judgment of the court.

212 (b)—When the sheriff, under *The Creditors' Relief Act*, takes possession of goods which are in the custody of the Division Court bailiff under a writ of attachment or execution, the costs and dis-

bursements of the bailiff shall be a first charge upon the goods, and shall be paid by the sheriff to the bailiff upon demand, after being taxed.

Cross Judgment.—Section 213. If there are cross judgments between the parties, the party only who has obtained judgment for the larger sum shall have execution, and then only for the balance over the smaller judgment and satisfaction for the remainder, and also satisfaction on the judgment for the smaller sum shall be entered, and if both sums are equal, satisfaction shall be entered upon both judgments.

Writ Not to be Executed out of County.—Except in cases brought under Section 82 (providing that actions may be brought in the court nearest to the defendant's residence), no writ in the nature of a writ of execution or attachment shall be executed out of the limits of the county over which the judge of the court from which the writ issues has jurisdiction. Section 214.

Must be Executed Within County.—All writs of execution or attachment must be executed within the county from which they issue, except in cases where the sitting of the court is nearest to defendant's residence, as provided in section 82.

If Defendant Removes to another County.—If a party against whom a judgment has been entered up removes to another county without satisfying the judgment, the judge of the county to which the party has removed may, upon production of a copy of the judgment, duly certified by the judge of the county

in which the same has been entered, order an execution for the debt and costs awarded by the judgment, to issue against such party. Sec. 215.

Instead of this, proceedings by transcript are usually adopted.

Payment of Execution before Sale.—Sec. 216. If a party against whom an execution has been awarded pays, or tenders to the clerk or bailiff, before an actual sale, such sum of money or such part thereof as the party in whose favor the execution has been awarded agrees to accept in full of his debt, together with the fees, the execution shall thereupon be superseded and the goods released and restored to such party.

Transcript and Proceedings.

Sec. 217.—Upon application to be made on the part of any plaintiff or defendant having an unsatisfied judgment in a court, the clerk shall prepare a transcript of the entry of such judgment and shall send the same to the clerk of any other court, whether in the same or any other county, with a certificate signed by him and sealed with the seal of the court, and addressed to the clerk of the court to whom it is intended to be delivered, and stating the amount unpaid upon the judgment and the date at which the same had been recovered. The clerk to whom the certificate is addressed shall enter the transcript in the proper book, and the amount due according to the certificate.

Proceedings thereunder.—All proceedings may be taken for the enforcing and collecting of the judgment in the last mentioned court that could have been taken for a like purpose upon judgments recovered in any court. After transcript has been issued, no further proceedings shall be had in the court from which the transcript issued, without an order from the judge, unless an affidavit be filed stating (1) that the judgment remains unsatisfied, in whole or in part; (2) that the execution issued in the division to which the transcript issued has been returned *nulla bona*, or that the deponent believes the defendant has not sufficient goods in that division to satisfy the judgment; and upon such affidavit being filed, the clerk may issue such other process as the creditor may direct.

There must be an Application for.—A clerk cannot upon his own mere motion prepare a transcript and send it off. It can only be done upon application of the plaintiff or defendant, or the agent of either.

Notice of Nulla Bona Return.—Section 218 directs that the clerk shall, immediately after *nulla bona* has been returned to an execution issued on a transcript, give notice to the plaintiff of such return, or to the clerk who issued the transcript, if the plaintiff's address is not known. The notice should specify the date at which the execution issued, the date at which same had been returned by the bailiff, and the return made thereto. It should be prepaid and registered and the post office certificate of registration filed. The absence of such certificate shall be

prima facie evidence against the clerk that the notice has not been forwarded. The postage and registration are costs in the cause.

Revival of Judgment.—Sec. 219. In case of the death of either, or of both parties to a judgment, the party in whose favor the judgment has been entered, or his personal representative, in case of his death, may issue execution therein in conformity with the rules.

Renewal of Execution.—Every execution shall be dated on the day of its issue, and shall be returnable within thirty days from the date thereof, but may from time to time be renewed by the clerk, at the instance of the execution creditor, for six months from the date of such renewal, in the same manner and with the same effect as like writs from courts of record. Sec. 220.

Expired Execution.—An execution that has expired cannot be renewed. An execution need not be renewed when it has been acted upon or levy made.

County Crown Attorney as Clerk may Renew.—By section 221, the County Crown Attorney, while discharging the duties of clerk, may renew any writ of execution which may be lawfully renewed, and it shall have the same force and effect as if it had been renewed by the clerk of the court, and he shall be entitled to the same fees as the clerk for like services.

Issue of may be Ordered before Regular Day.—Under section 222, the judge may order the issue of an execution before the regular day. The appli-

cation for this purpose must be founded upon affidavit, showing that there is danger of losing the debt, if compelled to wait until the regular day appointed for the payment before execution can issue. The judge may order an execution to issue at such time as he thinks fit

Execution to Sheriff.

Section 8 of 57 Vic., cap. 23, repeals sections 223, 224, 225 and 226, and substitutes the following provisions :—

In case an execution against goods is returned *nulla bona*, and the sum remaining unsatisfied on the judgment under which the execution issued amounts to the sum of \$40, the party in whose favor the judgment was entered may sue out an execution against the lands of the party in default, and the clerk of the court in which such judgment was obtained shall, at the request of the party prosecuting the judgment, issue under the seal of the court, a writ of execution against the lands of the party in default to the sheriff of the county in which the return of *nulla bona* had been made, or to the sheriff of any other county in the Province in which lands of the party in default are situate ; and the sheriff, on receipt of the writ shall act upon the same, and it shall have the same force and effect against the lands of the party in default as if the said writ of execution had issued out of the County Court.

(2)—Until such judgment has been duly paid and satisfied, the party entitled to the same may pursue

the same remedy for the recovery thereof, or of any balance due thereon, as if the judgment had been obtained in the County Court.

(3)—The sheriff receiving such writ of execution shall make a return thereof, and pay the money made thereon, to the clerk of the court out of which such execution issued.

(4)—After an execution has issued against lands under this Act, no further proceedings shall be had in the court from which the execution issued, without either an order from the judge, or unless the judgment creditor, his attorney or agent, shall make and file with the clerk of the court from which execution issued an affidavit, stating (1) that the judgment remains unsatisfied, in whole or in part ; (2) the amount (if any) which has been paid upon judgment ; (3) that execution against lands has been returned unsatisfied ; or that he believes the judgment debtor has not sufficient lands in the county in which the execution against lands had been issued to satisfy the judgment.

(5)—No execution against lands shall issue to the sheriff of any county until a *nulla bona* return has first been made in the cause by a bailiff of the court in which the judgment had been recovered.

The execution against lands may be in the form Schedule D to the Act.

Sale of Equity of Redemption.—On any writ of execution against goods and chattels, the sheriff, or

other officer to whom the same is directed, may seize and sell the interest or equity of redemption in any goods or chattels of the party against whom the writ had been issued, and the sale shall convey whatever interest the mortgagor had in the goods at the time of seizure. Sec. 227.

Money, Notes, Cheques, etc., May be Seized.—Bailiffs may levy on the goods of any person against which they are holding an execution (except those which are by law exempt from seizure); and may also seize and take any money or bank notes, and any cheques, bills of exchange, promissory notes, bonds, specialties or securities for money belonging to such person. Sec. 228. [See Exemptions].

To be Held for the Benefit of Creditors—It is the duty of the bailiff to hold the cheques or securities for money so seized for the benefit of the plaintiff, as security for the amount directed to be levied by the execution, or so much thereof as has not been otherwise levied or raised; and the plaintiff, when the time of payment thereof has arrived, may sue in the name of the defendant, or in the name of any person in whose name the defendant might have sued, for recovery of the moneys so made, secured or made payable. Sec. 229.

How Suit may be Brought on.—“Execution creditor,” which is here meant, would perhaps be a more appropriate term instead of “plaintiff” or “defendant.”

List of Securities to be Prepared.—It would be advisable for the bailiff in all such cases to prepare a

list of the securities seized, showing the amounts, dates, when and by whom payable, and to give notices to the different persons liable on them. If the execution creditor should not, within a reasonable time, determine to take proceedings upon those overdue, and the others as they become due, it would be the duty of the bailiff to hand them back to the debtor.

Consent to Discharge of Action.—The defendant in the original cause shall not discharge such action in any way without the consent of the plaintiff or judge. Sec. 230.

Costs of Enforcing Payment of Securities.—By section 231 it is provided that the party who desires to enforce payment of a security so seized, shall first pay or secure all costs. The moneys realized, or a sufficient part thereof, shall be paid over by the officer receiving the same, to apply on the plaintiff's demand, and the overplus, if any, shall forthwith be paid to the defendant in the original action, on the direction of the judge.

Date of Seizure to be Endorsed.—Section 232 directs that the bailiff, after seizing goods under an execution, shall endorse thereon the date of seizure, and shall immediately, and at least three days before the time appointed for the sale, give public notice by advertisement signed by himself, and put up at three of the most public places in the division, of the time and place of the sale. Such notice shall describe the goods and chattels taken.

Time of Sale of Goods.—The goods so taken shall not be sold until the expiration of eight days, at least, after the seizure thereof, unless upon the request, in writing, of the defendant whose goods they are. Sec. 233.

Officers Not to Purchase at Sale.—No clerk or bailiff, or other officer of the court shall directly or indirectly purchase any goods or chattels at any sale made by a bailiff under execution. Every such purchase shall be absolutely void. Sec. 234.

Exemptions.

[R. S. O., Cap. 64.]

2. The following chattels are hereby declared exempt from seizure under any writ in respect of which the Province has legislative authority, issued out of any court whatever in the Province, viz. :—

(1) The bed, bedding and bedsteads, including a cradle, in ordinary use of, the debtor and his family ;

(2) The necessary and ordinary wearing apparel of the debtor and his family.

(3) One cooking stove with pipes and furnishings, one other heating stove with pipes, one crane and its appendages, one pair of andirons, one set of cooking utensils, one pair of tongs and shovel, one coal scuttle, one lamp, one table, six chairs, one wash-stand with furnishings, six towels, one looking glass, one hair brush, one comb, one bureau, one clothes press, one clock, one carpet, one cupboard, one

broom, twelve knives, twelve forks, twelve plates, twelve teacups, twelve saucers, one sugar basin, one milk jug, one teapot, twelve spoons, two pails, one wash tub, one scrubbing brush, one blacking brush, one washboard, three smoothing irons, all spinning wheels and weaving looms, in domestic use, one sewing machine and attachments, in domestic use, thirty volumes of books, one axe, one saw, one gun, six traps and such fishing nets and seines as are in common use; the articles in this sub-division enumerated not exceeding in value the sum of \$150.

(4) All necessary fuel, meat, fish, flour and vegetables actually provided for family use, not more than sufficient for the ordinary consumption of the debtor and his family for thirty days, and not exceeding in value the sum of \$40.

(5) One cow, six sheep, four hogs and twelve hens, in all not exceeding the value of \$75, and food therefor for thirty days, and one dog.

(6) Tools and implements of, or chattels ordinarily used in the debtor's occupation, to the value of \$100.

(7) Bees reared and kept in hives, to the extent of fifteen hives.

. The debtor may, in lieu of tools and implements of, or chattels ordinarily used in his occupation, referred to in sub-division (6) of section 2, elect to receive the proceeds of the sale thereof, up to \$100, in which case the officer executing the writ shall pay the net proceeds of such sale, if the same shall not exceed \$100, or, if the same shall exceed \$100, shall pay that sum to the debtor in satisfaction

of the said debtor's right to exemption, under said sub-division (6), and the sum to which a debtor shall be entitled hereunder shall be exempt from attachment or seizure at the instance of a creditor.

4. The chattels so exempt from seizure as against a debtor shall, after his death, be exempt from the claims of creditors of the deceased, and the widow shall be entitled to retain the exempted goods for the benefit of herself and the family of the debtor, or, if there is no widow, the family of the debtor shall be entitled to the exempted goods, and the goods so exempted shall not be liable to seizure under attachment against the debtor as an absconding debtor.

5. The debtor, his widow, or family, or, in case of infants, their guardians, may select, out of any larger number, the several chattels exempt from seizure.

6. Nothing herein contained shall exempt any article enumerated in sub-divisions 3, 4, 5, 6 and 7 of section 2 of this Act from seizure in satisfaction of a debt contracted for the identical article.

Under section 7, goods and chattels now liable to seizure in execution for debt, shall, as respects debts which have been contracted prior to the first of October, 1887, remain liable to seizure and sale in execution, provided the writ under which they are seized has endorsed upon it a certificate signed by the judge out of which the writ issues, if a court of record, or where the execution issues out of a Division Court, by the clerk of the court, certifying that it is for the recovery of a debt contracted before that date.

A boat, in lawful use by the owner, though not a fisherman, has been held to be exempt.

A horse, ordinarily used in the debtor's occupation, not exceeding in value \$60, was held exempt from seizure under the original Exemption Act ; but if worth more than \$60, it was not. If worth more than \$100, it would now be exempt.

Money received by a debtor from an insurance company, by reason of a fire destroying exempted goods, is exempt from garnishment.

Wearing apparel consists of that which is worn or made to be worn. Cloth actually appropriated thereto was held to be apparel.

Tools and implements include all mechanical implements for working with ; all implements of manual operation, but particularly such as are used by farmers and mechanics.

It has been held that the expression "implements of trade" refers to the business of a mechanic, as a carpenter, blacksmith, etc. But the words used in the Act have a wider significance. The words "tools and implements of, *or chattels* ordinarily used in the debtor's *occupation*" would cover any business and profession as well as mechanical occupation.

A music teacher's piano has been held in the United States to be an instrument of business.

A steam engine, used for working a threshing machine, was held to be an instrument of husbandry.

If goods exempt be seized and sold, the execution creditor is not entitled to the money, but the execution debtor would be.

Judgment Debtors.

Some changes have been recently made in the law under this head.

Proceedings.—A party having an unsatisfied judgment proceeds under the 235th and subsequent sections of the Act. If the judgment remains unsatisfied, in whole or in part, a summons is sued out. If the proceedings be taken in a court other than that in which the judgment had been entered, judgment must be removed by transcript to the court in which summons is to issue. The summons must now be served personally (57 Vic., cap. 23, sec. 15.) Formerly this was not the case—a copy might be left at the house of the party to be served, with some grown up person.

Examination.—Examination takes place in the judge's chamber; witnesses may be examined upon oath; costs of all proceedings to be cost in the cause, unless the judge otherwise directs. Secs. 236, 237, 238.

If Discharged.—If discharged by the judge, no further summons shall issue out of the same division against him, without an affidavit satisfying the judge upon facts not before the court upon the examination,—that the party had not made a full disclosure of his estate, or an affidavit satisfying the judge that since the examination the party has acquired the means of paying. Sec. 239.

Not to be again Examined without Notice.—Rule 201 provides that the party, who after examination

has been discharged, may not be again summoned without notice; every clerk shall keep a book in which entries may be made, in the form of an index, to be called the "Judgment Debtor's Book," in which shall be entered the date when such judgment debtor was examined.

Failure to Attend.—A party failing to attend according to the requirements of the summons, shall not be liable to be committed to gaol for default, unless the judge is satisfied that such non-attendance was wilful, or that the party has failed to attend after being summoned. And if at the hearing it appears to the judge upon the examination that the party ought not to have been so summoned, or if the judgment creditor does not appear, the judge shall award the party summoned a sum of money by way of compensation for his trouble and attendance. Sec. 241.

Payment for Attendance.—In the case of a judgment debtor who resides more than three miles from the place of the sitting of the court, his non-attendance shall not be considered wilful, unless he shall have been paid or tendered, when summoned, a sum equal to seventy-five cents for his day's attendance, and ten cents for each mile from his place of residence to the court. Rule 202.

Order of Commitment.—When an order of commitment has been made, the clerk, when required so to do, may issue warrant to the bailiff of any court within the county, who is authorized to arrest. The warrant must be under seal. Sec. 242.

Who can Execute Warrant.—All constables and other peace officers, within their respective jurisdictions, shall aid in the execution of every such warrant. The keeper of the gaol of the county in which the warrant has issued shall receive and keep the prisoner therein until discharged. Sec. 243.

Essentials.—Warrants of commitment shall bear date on the day on which the order is made for commitment. They should have endorsed thereon the amount of the debt and costs, or of fine and costs, to the time of delivery to the bailiff. Warrants continue in force for six months from date, and no longer, unless renewed by an order of the judge, upon affidavit, showing the cause of non-execution, and that the moneys payable thereunder have not been satisfied. Rule 203.

Renewal.—The judge may order renewal for a further period, not exceeding six months, or, in his discretion, for a less period. Rule 204.

The renewal of a warrant shall be made by the clerk, by marking on the margin or endorsing thereon. (Rule 205.)

“Renewed by judge’s order for.....calendar months, from the..... day of A.D. 18.....

.....Clerk.”

Order May be Rescinded or Varied.—The judge, before whom summons is heard, may rescind or alter any order for payment previously made, and may make any further order for the payment of debt or

damages and costs, forthwith, or by instalments, or in any other manner that he thinks reasonable and just. Sec. 245.

Imprisonment Does Not Extinguish Debt.—No imprisonment under the Act extinguishes the debt or other cause of action on which judgment has been obtained, or protects the defendant from being summoned anew, or deprives the plaintiff of any right to take out execution against defendant. Sec. 247.

Offences and Penalties.

Contempt of Court.—Sec. 275. If a person wilfully insults the judge, during his sitting, or any officer in attendance on the court, or interrupts the proceedings, any bailiff or officer of the court may, by order of the judge, take the offender into custody, and the judge may impose upon the offender a fine not exceeding \$20; and in default of immediate payment, the judge may, by warrant under his hand and seal, commit the offender to the common gaol, for a period not exceeding six months, unless the fine and costs, with the expenses attending the commitment, be sooner paid.

Resisting Officers.—Sec. 276. If any officer or bailiff, or his deputy or assistant, be assaulted, while in the execution of his duty, or if any rescue be made or attempted to be made of any property seized under process of the court, the person so offending shall be liable to a fine of \$20, to be recovered by order of the court, or before a justice of the peace of the county or city, and to be imprisoned for any

term, not exceeding three months, and the bailiff of the court, or any peace officer, may, in any such case, take the offender into custody (with or without a warrant), and bring him before such court or justice.

Misconduct of Clerks and Bailiffs, etc.—Sec. 287.

If a bailiff or officer, acting under color of process, is guilty of extortion or misconduct, or does not duly pay or account for all money levied or received by him, by virtue of his office, the judge, at a sitting of the court, if the party aggrieved complain to him, in writing, may enquire into the matter, in a summary way, and for that purpose he may summon and enforce the attendance of all necessary parties and witnesses, and may make such order thereupon for the repayment of any money extorted, or for the due payment of any money so levied or received, and for the payment of any such damages and costs to the parties aggrieved as he thinks just; and in default of payment of the money so ordered to be paid within the time in the order specified, the judge may by warrant under his hand and seal, cause such sum to be levied by distress and sale of the goods of the offender, together with the reasonable charges of the distress, and sale. In default of such distress (or summarily in the first instance), may commit the offender to the common gaol of the county for a period not exceeding three months.

[Seizing exempted goods is held to be misconduct entitling a debtor to damages.]

Extortion.—Sec. 278. If a clerk or bailiff exacts or takes any fee or reward, other than the fees

allowed by law, for anything done by virtue of his office, or on any account relative to the execution of his duties, he shall, upon proof thereof before the court, be forever afterwards incapable of being employed in a court in any office of profit and emolument, and shall also be liable in damages to the party aggrieved.

Negligence of Bailiffs.—Sec. 279. If a bailiff, employed to levy an execution against goods, by connivance, or omission, loses the opportunity of so doing, then, upon complaint of the party thereby aggrieved, and upon proof of the fact alleged, to the satisfaction of the court, the judge shall order the bailiff to pay such damages as it appears the plaintiff has sustained, not exceeding the sum for which the execution issued; and the bailiff shall be liable thereto. Upon demand made therefor, and the bailiff refusing to satisfy the same, payment shall be enforced by such means as are provided for enforcing judgments recovered in the court.

If a bailiff neglects to return an execution within three days after the return day thereof, or makes a false return thereto, the party who sued out the writ may maintain an action in any court of competent jurisdiction against the bailiff and his sureties on the covenant entered into by them, and shall recover therein the amount for which the execution issued, with interest thereon from the date of the judgment, or such less sum as in the opinion of the judge or jury the plaintiff under the circumstances is entitled to recover. Sec. 280.

Execution Against Bailiff.—If a judgment be obtained in the action against the bailiff and his sureties, execution shall immediately issue thereon, and in case of the departure or removal of the bailiff from the limits of the county, the action may be commenced and carried on against his sureties alone, or against any one or more of them. Sec. 281.

Fines, How Enforced.—Secs. 282, 283.

A fine imposed by the court, under the authority of the Act, may be enforced upon the order of the judge, in like manner as a judgment.

In all cases in which a penalty or forfeiture is made recoverable before a justice of the peace, such justice may, with or without information in writing, summon before him the party complained against, and thereupon hear and determine the matter of the complaint, and on proof of the offence, convict the offender, and adjudge him to pay the penalty or forfeiture incurred, and proceed to recover same.

[All fines must be paid to the county crown attorney.]

Form of Conviction.—Sec. 284. In all cases where a conviction is had for any offence committed under the Act, the form of conviction may be in the words, or to the effect following, that is to say :—

Be it remembered that on this day of
 A. B. is convicted before

 one (or two, as the case may be) of Her Majesty's Justices of the
 Peace for the County of (or before a

County Judge of the County of.....acting
 under THE DIVISION COURTS ACT, of having (here note offence),
 and I (or we),.....the said
do adjudge the said.....
 to forfeit and pay for the same the sum of.....
 or be committed to the common gaol of the County of.....
for the space of.....

Given under.....hand and seal, the day and year aforesaid.

Protection to Persons Acting Under Warrants.

(Sections 285, 286, 287, 288.)

285.—No action shall be brought against a bailiff or any person acting by his order and in his aid for anything done in obedience to any warrant under the hand of the clerk and seal of the court, until a written demand, signed by the person intending to bring the action, of the perusal, and a copy of the warrant has by such person, his solicitor or agent, been served upon or left at the residence of the bailiff, and the perusal and copy have been neglected or refused for the space of six days—after demand.

286.—In case, after demand and compliance therewith, by showing the warrant to and permitting a copy thereof to be taken by the person demanding the same, an action is brought against the bailiff or other person who acted in his aid for any such cause, without making the clerk of the court who signed or sealed the warrant a defendant, then, on producing or proving the warrant at the trial, the jury shall give their verdict for the defendant, notwithstanding any defect of jurisdiction or other irregularity in or appearing on the warrant.

287.—If an action is brought jointly against the clerk and bailiff, or the person who acted in his aid, then, on proof of the warrant, the jury shall find for the bailiff or the person who so acted, notwithstanding such defect or irregularity ; and if a verdict is given against the clerk, the plaintiff shall recover his costs against him, to be taxed by the proper officer in such manner as to include the costs which the plaintiff is liable to pay to the defendant for whom a verdict has been found.

288.—In such action the defendant may plead not guilty, entering a note of the Act in the margin, and in such case may thereupon avail himself of the matters of defence herein given.

General Provisions.

Defect or Irregularity.—Sec. 289. No levy or distress shall be deemed unlawful, or the person making it a trespasser, on account of any defect or want of form in the information, summons, conviction, warrant, precept or other proceeding relating thereto ; nor shall the person distraining be deemed a trespasser from the beginning, on account of any irregularity afterwards committed by him ; but the person aggrieved by the irregularity may recover full satisfaction for the special damage.

Limitation of Actions.—Sec. 290. Any action or prosecution, for anything done in pursuance of the Act, shall be commenced within six months after the fact was committed, and shall be laid and tried in the county where the fact was committed, and notice

in writing of the action, and of the cause thereof, shall be given to the defendant one month at least before the commencement of the action.

If tender of sufficient amends be made before action brought, or if the defendant, after action brought, pays a sufficient sum of money into court with costs, then plaintiff shall not recover, and in such action the defendant may plead not guilty, and give any special matter in evidence under that plea. Sec. 291.

Costs in Actions for Damages Against Clerks and Bailiffs.—Sec. 292. In case an action is brought in any court of record in respect of any grievances committed by any clerk, or bailiff or officer of the Division Court, under color or pretence of the process of such court, and the jury upon the trial find no greater damages for the plaintiff than \$10, the plaintiff shall not have costs, unless the judge certifies in writing that the action was fit to be brought in such court.

Disposal of Fines.—Section 293 directs that the money arising from any penalty, forfeiture or fine imposed by this Act, not directed to be otherwise applied, shall be paid to the clerk of the court which imposed the same, and shall be paid by him to the county crown attorney of the county—to be by the latter paid over to the Provincial treasurer, and shall form part of the consolidated revenue fund.

Disposal of Moneys Paid into Court.

Under section 294, the clerk of every court shall, immediately after the receipt of any sum of money

whatever for any party to an action, forward through the post office, to the party entitled to receive the same, a notice, enclosed in an envelope addressed to such party, or in the case of a transcript of judgment from another court, then to the clerk who issued the same, at his proper post office address, informing him of the receipt of the money ; the notice thus sent shall be prepaid and registered, and the clerk shall obtain and file amongst the papers in the action the post office certificate of the registration, and shall deduct the postage and charge for registration from the moneys in his hands, but he shall charge no fee for the notice ; the absence from among the papers in the action of the certificate of registration shall be *prima facie* evidence against the clerk that the notice has not been forwarded.

Unclaimed Moneys.—All sums of money which have been paid into court to the use of any party, and which have remained unclaimed for a period of six years after the same were paid into court, or to the officers thereof, and all sums of money, when this Act takes effect, or afterwards, in the hands of the clerk or bailiff, paid into court, or to the officers thereof, to the use of any suitor, shall, if unclaimed for the period of six years after the same were so paid, form part of the consolidated revenue fund, and be paid over by the clerk or officer holding the same to the county crown attorney of his county, to be by him paid over to the treasurer of the Province ; and no person shall be entitled to claim any sum which has remained unclaimed for six years.

The foregoing is qualified by section 296, which says :—No time during which the person entitled to claim such sum was an infant, or of unsound mind, or out of the Province, shall be taken into account in estimating the six years.

Forfeiture of Fees by Bailiff.—If a bailiff omits to make the return of service of summons within the six days as required by Rule 183, he forfeits his fees payable to him ; neither can they be charged as costs in the cause.

General Rules and Orders.

The remaining sections of the Act—from 297 to 304, both inclusive, are devoted to the Board of County Judges—their authority to frame rules and amend the same, etc.

Section 298 and sub-sections thereto, contain the principal provisions, which are as follows :—

(1)—The Lieutenant-Governor may from time to time appoint and authorize five of the county judges, who shall be styled “The Board of County Judges,” to frame general rules and forms concerning the practice and proceedings of the Division Courts, and the execution of the process of such courts, with power also to frame rules and orders in relation to the provisions of this Act, or of any future Act respecting such courts, as to which doubts have arisen or may arise, or as to which there have been or may be conflicting decisions in any such courts.

(2)—The Lieutenant-Governor may appoint any retired County Judge to be one of the members of the Board.

(3)—The board may also from time to time make rules for the guidance of clerks and bailiffs, and in relation to the duties and services to be performed, and to the fees to be received by them; and may also substitute other fees in lieu of fees payable to clerks and bailiffs under any rule, order or statute.

The board may from time to time alter or amend any rules or orders made for the Division Courts, and may for any Division Court division, embracing a city or part of a city, establish a lower tariff of fees from that established for county Division Courts.

(5)—*The Inspector of Division Courts for the time being shall be a member of the said board.*

The last sub-section (printed in italics), was added by 57 Vic., cap. 23, sec. 3.

Postage and Registration.

All letters enclosing any papers in a cause, sent from one Division Court officer to another, or to a party to a suit, or to the judge, and unless otherwise provided for : all necessary notices sent by the clerk, shall be prepaid and registered; when papers are furnished to the judge, postage stamps for return postage must in all cases be enclosed. The costs of postage and registration shall in all cases be costs in the cause.

It is required by Rule 153 that every clerk, upon being furnished with the necessary postage or post card, shall answer promptly all reasonable enquiries made touching suits by parties thereto, their solicitors or agents.

The postages of papers required to be served out of the division and sent by mail for service, shall be costs in the cause. Sec. 102.

The costs of all proceedings, which form part of the regular proceedings in the cause, are generally understood as costs in the cause, and the party entitled to costs receives them from the opposite party.

When a clerk is required to give notice of a new trial, or transmit papers, etc., he is entitled to the necessary postage together with his fees at the time. The rules in this respect read :—"The clerk shall" (act) "on receiving the fees and necessary postage." See Rule 283 (a).

Where papers are sent to the judge and which will have to be returned by him, the necessary stamps for return postage should be enclosed.

Correspondence.

Correspondence with the inspector's department is always promptly attended to. When answers are sent to letters received from the department, the number of the official communication should be given. Neglect to do so, where the correspondence with the same party has reference to separate suits and different subjects, delays matters and leads to trouble and confusion. Suitors and solicitors should specially note this.

Some clerks and bailiffs are constant offenders in this respect. Their carelessness, as they should know, in small matters of this kind, is no recom-

mentation of their attention to more important duties.

Some officers, when writing for advice and instructions, in certain circumstances, state hypothetical cases of A, B, C, etc. This is quite wrong. In all cases the style of cause should be given, and the particulars, with dates, etc., taken from the procedure book.

Complaints.

All complaints against officers should be sent direct to the office of the inspector. The name and number of court, and of the name of officer against whom complaint is made, should be given. Also the nature of the complaint, the dates and amounts and style of suit, where possible. Attention to these particulars will facilitate the promptness of the enquiry.

Tariff of Fees.

The amended tariff of fees, as adopted by the Board of County Judges, came into force on the 1st July, 1894. Clerks and bailiffs are entitled to receive for their services the fees therein allowed, and no other charges can be legally made. The table of fees must be hung up in the clerk's office, in some conspicuous place, exposed to public view. A large printed card containing this table is supplied to every clerk, from the office of the inspector. The tariff will also be found appended to the annual reports of the inspector, which are distributed to clerks and bailiffs, and amongst the profession, and to such solicitors and suitors and others as make application for them.

The fees upon every proceeding are payable in advance to the clerk by the party at whose instance the proceeding takes place—to be afterwards charged against the unsuccessful party.

If the clerk chooses to give credit, and that the fees are not paid in the first instance, the payment thereof may be enforced by execution, in like manner as a judgment of the court. When the clerk hands papers to a bailiff to act, he is liable to the latter for his fees. It is proper and right that a bailiff should look to his clerk for payment, for it is an optional matter with the clerk to give trust to suitors. The following are the items :—

1. CLERK'S FEES.

1. Receiving claim, numbering and entering in procedure book \$ 15

(This item to apply to entering in the procedure book a transcript of judgment from another Court, but not an entry made for the issue of a judgment summons.)

2. Issuing summons, with necessary notices and warnings thereon, or judgment summons (as provided in the forms), in all :—

Where claim does not exceed \$20	40
“ exceeds \$20 and does not exceed \$60	50
“ exceeds \$60 and does not exceed \$100	60
“ exceeds \$100	1 00

(N.B.—In replevin and interpleader suits the value of goods to regulate the fee.)

3. Copy of summons, including all notices and warnings thereon 25
4. Copy of claim (including particulars), when not furnished by the plaintiff..... 25

5. Copy of set off or counterclaim (including particulars), when not furnished by the defendant.... \$ 25
 (Note, in either of the last two preceding items the fees may be taxed against the parties ordered to pay costs.)
6. Receiving and entering bailiff's return to any summons, writ or warrant issued under the seal of the Court (except summons to witness and return to summons or papers from another division) 15
7. Taking confession of judgment..... 10
 (This does not include affidavit and oath, chargeable under item 8.)
8. Every necessary affidavit, if actually prepared by the clerk, and administering oath to the deponent... 25
9. Furnishing duly certified copies of the summons and notices and papers with all proceedings for purposes of appeal (under section 151) as required by either party, per folio of 100 words..... 5
10. Certificate therewith 25
11. Certifying under the seal of the Court and delivering to a judgment creditor a memorandum of the amount of judgment and costs against a judgment debtor, under the Creditors' Relief Act, or for any other purpose 25
12. Copies of papers for which no fee is otherwise provided, necessarily required for service or transmission to the judge, each..... 10
 If exceeding two folios, per folio 5
13. Every notice of defence or admission entered, or other notice required to be given by the clerk to any party to a cause or proceeding, including mailing but not postages..... 15
14. Entering final judgment by clerk, on special summons, where claim not disputed 50

15. Entering every judgment rendered at the hearing, or
final order made by the judge. \$ 50

(Note, this fee does not apply to any proceeding on judgment summons.)

(This one fee of 50 cents will include the service of recording at the trial and afterwards entering in the procedure book the judgment, decree and order in its entirety, rendered or made at the trial. If a garnishee proceeding before a judgment, the fee of 50 cents will be allowed for the judgment in respect to the primary debtor, and a like fee of 50 cents for the adjudication, whenever made, in respect to the garnishee.)

16. Subpœna to witness 25

(The subpœna may include any number of names therein, and only one original subpœna shall be taxed, unless the judge otherwise orders.)

17. For every copy of subpœna required for service. 5

18. Summons for jury (including copy for each jurymen)
when required by the parties. 1 25

19. Calling and returning jury ordered by the judge. 25

20. Every order of reference or order for adjournment
made at hearing, and every order requiring the
signature of the judge and entering the same,
including final order on judgment debtor's ex-
amination. 25

(Any warning necessary with order, *e.g.*, the warning in Form 73, forms part of the order.)

21. Transcript of judgment to another Division Court. 25

22. Transcript of judgment to the County Court 50

23. Every writ of execution, warrant of attachment, or
warrant of commitment and delivering same to
bailiff. 50

24. Renewal of every writ of execution, when ordered
by the judgment creditor or of warrant of com-
mitment when ordered by the judge. 15

25. Every bond when necessary and prepared by the clerk (including affidavits of justification and of execution)	\$1 00
26. For necessary entries in the debt attachment book, in each case, (in all)	.20
27. Transmitting transcript of judgment; or transmitting papers for service to another division, or to the judge, on application to him, including necessary entries and mailing, but not including postage	25
28. Receiving papers from another division for service, entering the same, handing to the bailiff, receiving and entering his return, and transmitting the same (if return made promptly, not otherwise)	30
29. Search, by person not party to the suit or proceeding, to be paid by the applicant	10
Search, by party to the suit or proceeding, where the suit or proceeding is over one year old	10
(No fee is chargeable for search to a party to the suit or proceeding, if the same is not over one year old.)	
30. Taxing costs in defended suits after judgment pronounced	25
31. Making out statement of costs in detail (including bailiff's fees) at the request of any party or for the purpose of settlement or upon entering judgment by default	10
(Neither item 30 or 31 applies to statement of costs endorsed on summons or copy to be served.)	
32. Taxing bailiff's costs under section 7 of the Division Courts Act, 1889	25
33. Copying and transmitting to municipal clerk judge's decision in appeal	50

2. BAILIFF'S FEES.

1. Service of summons, issued under the seal of the Court, or judge's summons, or order, on each person (except summons to witness and summons to juryman):—

Where claim does not exceed \$20	\$ 30
“ exceeds \$20 and does not exceed \$60..	40
“ exceeds \$60 and does not exceed \$100.	50
“ exceeds \$100	75

(In interpleader suits the value of the goods to regulate the fee.)

2. For every return as to service, under item 1 ; attending at the clerk's office and making the necessary affidavit (as provided by Rule 183) .. 15
3. Service of summons on witness or jurymen, or service of notice 15
4. Taking confession of judgment and attending to prove 10
5. For calling parties and their witnesses at the sittings of the Court in every defended case, and at the hearing of every judgment summons 15
6. Enforcing every writ of execution, or summons in replevin, or warrant of attachment, or warrant against the body, each :—

Where claim does not exceed \$20	50
“ exceeds \$20 and does not exceed \$60..	75
“ exceeds \$60	1 00

(When goods replevied, the value of the goods to regulate the amount of the fee.) This does not include service of summons in replevin on defendant.

Fees under Creditors' Relief Act (see sec. 7 of 52 Vic., cap. 12, and sec. 25 of R. S. O., cap. 65) shall be taxed according to this tariff.

7. Every mile necessarily travelled to serve summons, or process or other necessary papers, or in going to replevy goods, or to seize on attachment, or in going to seize on a writ of execution, where money paid on demand, or made on execution, or case settled after seizure \$ 12
8. Mileage going to arrest under a warrant, when arrest made, per mile 12
9. Mileage carrying delinquent to prison, including all expenses and assistance, per mile 20
10. Every schedule of property seized, attached or replevied, including affidavit of appraisal, when necessary :—
 - Not exceeding \$20 30
 - Exceeding \$20 and not exceeding \$60 50
 - Exceeding \$60 75
11. Every bond, when necessary, when prepared by the bailiff, including affidavits of justification and of execution 50
12. Every notice of sale, not exceeding three, under execution or under attachment, each 15
13. Reasonable allowances and disbursements, necessarily incurred in the care and removal of property.
 - (a) If a bailiff removes property seized, he is entitled to the necessary disbursements in addition to the fees for seizure and mileage.
 - (b) If he takes a bond, then 50 cents instead of disbursements, for removal of property.
 - (c) If assistance is necessary in the seizure, or securing, or removal or retaining of property, the bailiff is entitled to the disbursements for such assistance.
 - (d) All charges for disbursements are to be submitted to the clerk for taxation, subject to appeal to the judge.

- (e) The bailiff must in all cases endorse a memorandum of all his charges on the back of the execution, or state them on a separate slip of paper, so that the clerk may conveniently tax the bailiff's charges for fees and disbursements.
- (f) The clerk is in all cases to sign the memorandum of his taxation and preserve it among the papers in the cause, together with the execution, for future reference, and thereby enable the clerk to certify the bailiff's returns properly.
14. If execution, or process in attachment in the nature of execution be satisfied, in whole or in part, after seizure and before sale, whether by action of the parties or otherwise, the bailiff shall be entitled to charge and receive 3 per cent. on the amount directed to be levied, or on the amount of the value of the property seized, whichever shall be the lesser amount.
15. Poundage on executions, and on attachments in the nature of executions, 5 per cent., exclusive of mileage for going to seize and sell, upon the amount realized from property necessarily sold.

3. FEES TO WITNESSES AND APPRAISERS.

Allowance to Witnesses.

Attendance, <i>per diem</i> , to witnesses residing within 3 miles of the place where the Court is held, if within the county	\$ 75
And if without the county	1 00
Attendance if witness resides over 3 miles from the place of sittings, and within the county, <i>per diem</i>	1 00

Attendance if witness resides without the county and more than 3 miles from the place of sittings,
per diem \$1 25

Barristers and solicitors, physicians and surgeons, engineers and veterinary surgeons, other than parties to the cause, when called upon to give evidence of any professional service rendered by them, or to give professional opinions, *per diem* 4 00

(Note.—Disbursements to surveyors, architects and professional witnesses, such as are entitled to specific fees by statute, are to be taxed, as authorized by such statute.)

If witnesses attend in one case only, they will be entitled to the full allowance.

If they attend in more than one case, they will be entitled to a proportionate part in each cause only.

The travelling expenses of witnesses, over 3 miles, shall be allowed according to the sums reasonably and actually paid, but in no case shall exceed twenty cents per mile, one way.

FEES TO APPRAISERS.

Fees of Appraisers of Goods, etc., Seized under Warrant of Attachment.

To each appraiser, 50 cents per day, during the time actually employed in appraising goods, to be paid in the first instance by plaintiff, and allowed in the costs of the cause.

FEES IN SUITS NOT EXCEEDING \$10.

Clerk.

For all services, from entering action, or suing-out a judgment or interpleader summons, up to and including the entering of final judgment, or final order on any such judgment, or interpleader summons, in case the action proceeds to judgment or final order \$1 25

In case the action does not proceed to judgment or final order, the fees heretofore, or that may hereafter be payable, but not exceeding in the whole the said sum.

For issuing writ of execution, warrant of attachment, or warrant for arrest of delinquent, and entering the return thereto \$ 50

Bailiff.

For all services rendered in serving summons and making return, and any other service that may be necessary, before judgment is entered by the clerk or pronounced by the judge, mileage excepted 40

For enforcing execution, schedule of property seized or attached, bond, where necessary, and all other necessary acts done by him, after seizure, mileage excepted, if money made, or case settled after levy 1 00

(Necessary disbursements incurred in the care and removal of property shall be allowed by the clerk, subject to the approval of the judge.)

The changes from the old tariff are not very many, and will be quickly noted by those more immediately affected.

The fees to the clerk, under items 1 and 2, remain the same as in the old tariff.

So in replevin and interpleader suits, the value of goods regulate the fee.

In item 3—copy of summons—the fee is increased, from 20 to 25 cents.

Copy of claim—item 4—the fee is increased from 20 to 25 cents.

Copy of set-off—item 5—increased from 20 cents to 25 cents.

In the former schedule this fee had to be paid by defendant ; it is now costs in the cause.

In item 6—receiving and entering—there is no change ; the fee of 15 cents remains the same.

The fee for entering and noting defence, etc., No. 7 of old tariff, 25 cents, appears to have been wiped out altogether. No reason for the disallowance of this fee is given. The Board of County Judges very likely considered the other increases an equivalent.

Item 8 of old tariff is made item 7 of the new—taking confession of judgment. The fee remains as heretofore.

Item 8 of new tariff—affidavit (if prepared by the clerk), and administering oath (item 9 of old), is unchanged.

Item 9 (formerly 10), furnishing copies of papers, has been modified. A fee of 5 cents per folio of 100 words, for certified copy for summons, and notices, and papers with all proceedings for purposes of appeal, has been substituted. And item 10 allows a charge of 25 cents to be made for certificate therewith.

Item 11 gives 25 cents for certifying under the seal of the court, and making up memorandum of judgment and costs against a judgment debtor, for the judgment creditor, under the Creditors' Relief Act, is an item properly introduced here.

The 10 cents, each, for copies of papers, for which no fee is otherwise provided, required for service, or transmission to the judge, remains as before, item 12.

If exceeding two folios, 5 cents, per folio, may be charged.

Items 13, 14 and 15 are the same as allowed under the old tariff as 11, 12 and 13.

The fee allowed under item 15 does not apply to any proceeding on judgment summons. The one fee of 50 cents includes the service of recording at the trial, and entering order made, in procedure book. If a garnishee proceeding, before judgment, the fee of 50 cents will be allowed in each case, for the judgment in respect to the primary debtor, and for the adjudication against the garnishee.

Item 16—subpœna to witness, 25 cents. In the old tariff this was 15 cents, under item 14. The fee of five cents for each copy required remains the same.

Item 18—\$1.25, includes summons for jury and copies required for each jurymen, is an amendment to the old tariff, where the item (15) was, summons to each jurymen, 10 cents.

Calling and returning jury, ordered by the judge, is made item 19, and a fee of 25 cents goes with it.

The fee on order of reference and orders requiring signature of the judge, item 20—(17, old,)—remains unchanged, except made to include the final order on judgment debtor's examination.

Item 21 (18, old,) gives the same fee for transcript, 25 cents. The transcript to County Court has been done away with.

Item 23 :—Writ of execution, or warrant, 50 cents, and 24, renewal of same, 15 cents, stand as before, and were 19 and 20 of old tariff.

Item 25, permits a charge of \$1 for bond—including affidavits of justification and of execution—formerly 50 cents was the fee, under item 21.

Items 26 (new), 22 (old), 27 (new), 23 (old), 28 (new), 24 (old), 29 (new), 25 (old), remain without change as to the fee allowed.

Item 30, (26, old,) taxing costs, 25 cents, remains the same, but is only chargeable “after judgment has been pronounced.”

The additions are :—

Item 31—Making out statement of costs in detail, 10 cents. This includes the bailiff's fees, and this charge can only be made to the party at whose request the statement is furnished.

Neither of the items, 30 or 31, it will be seen, applies to statement of costs endorsed on the summons.

Item 32—taxing bailiff's costs, under section 7, of the Act of 1889, 25 cents—relates to bailiff's fees when the goods in his possession have been taken by the sheriff under The Creditor's Relief Act.

Bailiff's Fees.

For the items 1, 2, 3, 4, the fees are the same as in the old tariff.

The fee of 15 cents, for calling parties and their witnesses, is extended to the hearing of judgment summons, for which the same fee is allowed.

The fees for enforcing writ (item 6), remain the same.

These fees do not include service of summons in replevin on defendant. . . . The value of the goods regulate the amount of the fees, as heretofore.

Fees under "The Creditors' Relief Act," shall be taxed according to the tariff; that is, when goods in possession of the bailiff are taken by the sheriff. Under section 7 of that Act, all costs and disbursements of the bailiff shall be a first charge on the goods, and shall be paid by the sheriff to the bailiff, on demand, after being taxed by the clerk.

The mileage item, under item 8, in the old tariff, is divided into two items in the new table.

Going to arrest, under warrant, when arrest is made, 12 cents per mile.

Carrying delinquent to prison, including all expenses, 20 cents per mile.

Practically the fees are the same as heretofore.

The language of item 7, in the new tariff, varies a little from that of the old, but the mileage allowed is the same—12 cents, for every mile, one way. This does not permit a charge to be made for a fractional part of a mile.

Where an attachment has been issued against an absconding debtor, or an execution against a judgment debtor's property, and the person who would be entitled to the proceeds insists upon the bailiff making an attempt to find property, whereby mileage and expenses are to be incurred, Rule 298 says that

it shall be necessary for a deposit to be made with the clerk, of the amount of bailiff's fees, and provided a proper endeavor (although unsuccessful) has been made by the bailiff, after such deposit of fees, to the satisfaction of the clerk (but subject to appeal to the judge), to secure property whereon to levy, in such case the bailiff shall be entitled to his mileage.

The items for making out schedules of property seized—including affidavit of appraisal, when necessary, stand without any change, at 30, 50 and 75 cents.

The fees for taking bond and giving notices of sale—of 50 cents and 15 cents, remain as before.

Reasonable allowances and disbursements necessarily incurred, in the care and removal of property, are qualified as follows :—

(a) If a bailiff removes property seized, he is entitled to the necessary disbursements, in addition to the fees for seizure and mileage.

(b) If he takes a bond, then to 50 cents, instead of disbursements for removal of property.

(c) If assistance is necessary in the seizure and securing, or removal, or retaining property, the bailiff is entitled to the disbursements for such assistance.

(d) All charges for disbursements must be submitted to the clerk for taxation, subject to appeal to the judge.

(e) The bailiff must, in all cases, endorse a memorandum of all his charges on the back of the execu-

tion, or state them on a separate slip of paper, so that the clerk may more conveniently tax the same.

(f) The clerk is in all cases to sign a memorandum of his taxation, and preserve it among the papers in the cause, together with the execution, for future reference.

In the old tariff these specific details find no place.

The last item—13—of the old tariff, treated of the allowance for bailiff's poundage. In item 14 of new tariff—if the execution be satisfied in whole or in part, after seizure, and before sale, whether by action of the parties or otherwise, the bailiff is entitled to receive three per cent. on the amount directed to be levied, or on the amount of the value of the property seized, whichever is the lesser amount.

Item 15 gives a poundage of five per cent., exclusive of mileage, for going to seize and sell, upon the amount realized from property necessarily sold.

Fees to Witnesses.

These have been settled as follows :—

Attendance, per diem, to witnesses residing within three miles of where the court is held, if within the county, 75 cents ; if without the county \$1, per day, is allowed.

A witness who resides over three miles from the place of sittings, within the county, is entitled to \$1, per day ; if outside the county, and more than three miles from the place of sittings, he gets \$1.25, per day.

Barristers, solicitors, physicians, surgeons, engineers, and veterinary surgeons, when called upon to give evidence professionally, are entitled to receive \$4 per day.

If witnesses attend in one case only, they will be entitled to full allowance. If they attend in more than one case, they will be entitled to a proportionate part only in each cause.

The travelling expenses of witnesses, over three miles, shall be allowed, according to the sums reasonably and actually paid, but in no case shall exceed 20 cents per mile one way. The fees to professional witnesses have to be certified by the judge. 57 Vic., cap. 25.

Fees to Appraisers.

The fees to appraisers of goods seized under warrant of attachment are :—

To each appraiser, 50 cents, per day, during the time actually employed ; to be paid in the first instance by plaintiff, and allowed as costs in the cause.

Fees in Suits where Claim or Demand does not Exceed \$10.

Under 57 Vic., cap. 23, section 11, the following are the fees :—

To the clerk for all services, from entering action, or suing out judgment or interpleader, up to and including the entering of final judgment, or final order on such judgment, or interpleader summons, in case the action proceeds to judgment or final order, \$1.25.

For issuing writ of execution, warrant of attachment, or warrant of arrest, and entering the return thereto, 50 cents is the fee.

The bailiff, for all services rendered by him—in serving summons and making return to clerk, or any other services that may be necessary, before judgment—is entitled to the fee of 40 cents, besides mileage.

For enforcing execution, schedule of property seized or attached, bond, where necessary, and all other acts done by him, after seizure, mileage excepted—if money made, or case settled after levy, the fee allowed the bailiff is \$1.

Necessary disbursements incurred in the care and removal of property shall be allowed, as in ordinary cases, after taxation.

All costs should be taxed, when possible, on the day when the action is tried.

Where it is evident that the work charged for has been necessarily performed by the officer, a reasonably liberal construction should be given to the items of the tariff. At the same time, it must be constantly kept in view by the taxing officer, that he cannot go beyond the reasonable import of the language employed.

The question of how the entries should be made for services in suits where claim does not exceed \$10, has been asked by several clerks. The one answer given is, to rule an additional line for this in the fee book, at foot, enter the item, leaving a blank for the amount, until judgment reached, to fill in the entries.

General Information.

To the numerous questions daily asked by officers of the court, solicitors, suitors and agents, as to the construction to be put upon certain items of the tariff, the following general remarks may be applied :—

Replevin.—In replevin cases, the value of the goods regulate the fee.

Interpleader.—In interpleader cases it is the duty of the bailiff to ascertain the value of the goods seized, and to specify such value in his written application for interpleader. This will be always a guide to the amount of the clerk's fee.

Concurrent Summonses.—Rule 15 says that the costs only of the summonses actually served shall be allowed on taxation, unless the judge directs otherwise. Summons can only issue where there are more defendants than one, and they reside in different counties.

Warnings.—No fee accompanies the service of adding future days of sittings or warning notices.

Copy of Claim.—Under the old tariff, this item was charged to plaintiff, when not furnished by him, the fee allowed being 20 cents, The new tariff allows 25 cents to be charged, and the words "to be paid by the plaintiff," omitted. The fee is to be taxed against the party ordered to pay costs.

Set-off or Counterclaim.—This item has been increased from 20 to 25 cents, and is now also taxed against the party ordered to pay costs ; heretofore it had to be paid by defendant.

Summons.—Where a case is settled before issue of summons, no fee can be claimed by the clerk for entering return.

Confession.—The fee of 10 cents for taking confession, does not include the affidavit and administering oath, for which a fee of 25 cents is allowed.

Certified Copies.—This fee has been made 5 cents per folio of 100 words—with 25 cents added for the clerk's certificate.

Copies of papers for transmission to the judge, and for which no fee is otherwise provided, carry a fee of 10 cents, each.

Defence.—A fee for entering defence finds no place amongst the items of the new tariff. Item 13 gives the fee of 15 cents to the clerk, for every notice required to be given by him.

Affidavits.—It is a condition that the affidavit has been prepared by the clerk to entitle him to the fee of 25 cents allowed.

Notices.—The clerk is only entitled to a fee for notices which are *required* by the Act or Rules, or under order of the judge, to be given. The clerk is entitled to the necessary postage, but to no fee for mailing.

Entering Judgment.—The one fee of 50 cents includes all services, of recording and entering. Under sec. 4 of 57 Vic., cap. 23, (which amends sec. 144) the judge may postpone giving judgment until it is convenient for him to give the same. When received by the clerk of the court, the latter is obliged,

forthwith, to enter the judgment, and notify the parties. The giving of the necessary notices would be the only additional charges to which the clerk would be entitled.

Summoning Jurors.—The fee for this service is now \$1.25, which includes copy for each jurymen. Sections 155 and 156 of the Act are amended, so as to read that the party giving notice requiring a jury “*shall at the same time deposit with the clerk, towards costs in the cause, the proper fees for the expenses attending the summoning of the jury.*”

Where there are several cases tried by a jury, the costs of summoning should be proportionately divided.

The fee for calling a judge's jury is 25 cents. The section of the Act (168) with reference to this item has been amended, and now reads—“*and each juror so called and sworn shall be paid the sum of 10 cents.*”

Settlement.—Where a case put on the judge's list is settled, before being called in court, the clerk would not be entitled to the fee of 25 cents allowed by item 20. The case having been withdrawn by the parties from the judge's authority, he could make no order after settlement.

Settlement by the defendant, or payment by him into court of the amount, must be made with or to the clerk of the court in which the suit was entered; or he must be notified.

Where a cause is adjourned, no order of adjournment shall be served, except by direction of the judge.

Discontinuance of Action.—Where a plaintiff discontinues the action he shall give notice in writing to the clerk and defendant, and the latter may apply to the judge for an order for his costs. Rule 252.

Where, in a contested case, the defendant has prepared for trial, and before the court sits the action is withdrawn, the judge may order payment of all costs, and also counsel fee and disbursements.

Transcript.—A transcript of judgment to another court must issue from the court in which judgment had been originally recorded, and should in all cases be mailed direct to the clerk receiving transcript.

The proper amount of a foreign clerk's fees on the notice of *nulla bona* return to an execution issued under transcript of judgment (sec. 218), would be 15 cents for receiving; 50 cents for execution; 15 cents for entering bailiff's return, and 15 cents for notice of return. Postage and registration would also be added. Some clerks fall into the error of putting costs at \$1.03, and collecting that amount from the defendant, whereas they are only entitled to collect 80 cents, that is, receiving, 15 cents; issuing, 50 cents, and entering return, 15 cents.

Transcripts cannot issue where proceedings have abated, or in a case where no warrant or judgment summons shall have been issued on a judgment more than six years old, unless by leave of the judge.

In cases brought to trial, a clerk should not issue a transcript of judgment until the lapse of fourteen days from the trial, unless by order of the judge.

After a transcript has issued, the home court has no further right to deal with the case, except by order of the judge, or under 52 Vic., cap. 12, sec. 24, which requires the filing of an affidavit of facts with the clerk to warrant the issue of any further process. He cannot, either as agent for the judgment creditor or otherwise, order that the money made shall be transmitted to himself or to any other person.

All transcripts of judgments must now be prepared upon a whole sheet of foolscap, and should be carefully written, without contraction of words or figures, in a plain hand, or be printed without contraction of words or figures. The fee for transmitting a transcript of judgment to another division and mailing, including necessary entries, but not postage, is 25 cents.

By the amending Act, 57 Vic., cap 23, sec. 8—sections 223, 224, 225 and 226 of the Act are repealed as to issuing transcripts to County Court.

In case an execution against goods is returned *nulla bona*, and the sum remaining unsatisfied on the judgment, on which the execution amounts to \$40, the party in whose favor the judgment was entered may sue out an execution against the lands of the party in default, and an execution against lands shall issue direct to the sheriff of the county in which the return of *nulla bona* had been made, or to the sheriff of any other county in the Province, in which the lands of the party in default may be situated.

The sheriff must make his return to the clerk of the court, and pay over to the clerk any money made.

No execution against lands can issue to the sheriff until a *nulla bona* return has first been made in the case by the bailiff of the court.

The fee of 30 cents provided by item 28—Receiving papers from another division for service, entering the same, handing to the bailiff, receiving and entering his return, and transmitting, is coupled with the condition—"if the return made promptly, not otherwise,"—and should be borne in mind by the officers of the court.

Costs.

The fee for making out a statement of costs in detail has been increased from 5 to 10 cents, and must show items of bailiff's fees allowed, if any:

The clerk shall determine the number of witnesses to be allowed on taxation. He should satisfy himself that the witnesses attended, and that the claims are just, and may require to be furnished with an affidavit of disbursements.

On returning process, etc., received from a foreign court, the clerk should give a correct statement in detail of the items of all charges made for fees and disbursements, or execution of process.

The fees marked in the schedule are the only fees to be received by clerks and bailiffs.

It is the duty of the clerk to see that his bailiff is vigilant in the performance of his duties, that all returns of process are made promptly, and to enforce the penalties for negligence, by disallowing the fees, where the officer is culpable, and does not make returns within the time required.

Recent changes in the tariff will, upon the whole, be found more favorable to the bailiff. What are considered reasonable disbursements are now more accurately defined. So are the items relating to the bailiff's poundage. In this connection the officer should remember that it is only *after seizure* he can justify his claim.

Under Rule 298, where the party having the control of an execution or attachment insists upon the bailiff making an attempt to find the property, whereby mileage and expenses are incurred, it is necessary that a deposit should be made with the clerk, of the amount of bailiff's fees ; and provided a proper (although unsuccessful) endeavor shall have been made, to the satisfaction of the clerk, the bailiff is entitled to his mileage. This is an advantage over the old state of things, when, no matter what trouble a bailiff took, or what expenses were incurred by him, he got nothing for his trouble, unless he made the money.

Item 6 (and not item 1) settles the fees to which a bailiff is entitled for enforcing writ in replevin.

Where a second execution is received, while goods under seizure, a bailiff is entitled to a fee for "en-

forcing " the same. That does not necessarily mean another seizure, but the realization of the money. Neither would the bailiff be entitled to fee for schedule on the second execution, the property being already in the custody of the law.

Where a bailiff has several summonses or executions in his hands, in different suits, and serves and executes them in one journey, he is entitled to mileage in each case, and to his proper fees.

Where a bailiff travels to serve several defendants in one suit, he is not entitled to mileage from the clerk's office upon each, but only to mileage from place to place, on the distance actually and necessarily travelled.

A bailiff is entitled to no fees whatever, where, by his own act, he abandons seizure, except as under Rule 298.

A bailiff is not entitled to fees when he acts upon an execution, or other process, that has expired.

A bailiff gets his mileage on going to seize, but none on going to sell. The poundage fees cover the latter.

The clerk is liable to the bailiff for his lawful fees, when he requires him to act.

No mileage is allowed for ineffectual attempts to effect service ; only when the service is effected, and then for the one journey, from the clerk's office to the place of service. If a bailiff has travelled twenty miles to a defendant's residence, and does not find him at home, but meets him within two miles, or

less, of the clerk's office, he would be entitled to mileage only for the shorter distance.

When a bailiff makes an arrest, he is entitled to receive only the fee of 20 cents per mile from the place of arrest, for taking to prison, no matter what disbursements he may have incurred on the way. The conveying of his prisoner by rail, if it is the nearest route, makes no difference.

An execution cannot be legally enforced, nor a warrant of commitment executed, by a bailiff's assistant—only by the bailiff himself, or his properly appointed deputy, can this duty be performed.

TABLE B.

LIST of Division Court Clerks, their Post Office Address, the County and Number of Division in which their Courts are situated, for the Province of Ontario, up to 31st December, 1893, and changes up to date.

COUNTY.	NO. OF DIVISION.	NAME OF CLERK.	POST OFFICE ADDRESS.
Algoma	1	E. Biggins	Sault Ste. Marie.
	2	Thomas Sullivan ...	Bruce Mines.
	3	Wm. L. Nichols ...	Thessalon.
	4	John Mackintosh ..	Webbwood.
	6	Wm. J. Smith	Richard's Landing.
Brant	1	Joseph Robinson ..	Brantford.
	2	John K. Finlayson..	Paris.
	3	David Baptie.....	St. George.
	4	Hy. Cox.....	Burford.
	5	Walter E. Hooker..	Scotland.
Bruce	1	Wm. Collins	Walkerton.
	2	H. B. O'Connor....	Teeswater.
	3	Joseph Barker	Kincardine.
	4	N. McKechnie	Paisley.
	5	Robert Munro	Port Elgin.
	6	Hugh Murray	Underwood.
	7	A. Neelands	Invermay.
	8	James Walmsley...	Wiarton.
	9	Angus Martyn	Ripley.
	10	W. Moshier.....	Lion's Head.
Carleton	1	J. R. Armstaong...	Ottawa.
	2	Wm. Henderson ...	Fallowfield.
	3	Hy. W. McDougall.	Carp.
	4	W. P. Taylor.....	Fitzroy Harbour.
	5	John Kerr	Kars.
	6	Daniel McLaurin ..	Metcalf.
	7	F. W. Harmer	Hintonburg.

COUNTY.	NO. OF DIVISION.	NAME OF CLERK.	POST OFFICE ADDRESS.
Dufferin	1	Joseph Patullo	Orangeville.
	2	Fras. G. Dunbar ..	Shelburne.
	3	Wm. Love	Stanton.
	4	James Henry	Mono Mills.
	5	R. E. Hamilton....	Grand Valley.
Elgin	1	A. Love	Aylmer.
	2	Alex. McBride	St. Thomas.
	3	Alex. McBride	St. Thomas.
	4	A. N. C. Black	Dutton.
Essex	1	James A. Stewart ..	Sandwich.
	2	J. H. C. Leggatt ..	Amherstburg.
	3	E. Allworth	Kingsville.
	4	C. Bell	Oxley.
	5	George A. Morse....	Leamington.
	6	E. P. Bouteiller....	Belle River.
	7	John McCrae	Windsor.
	8	John Milne	Essex.
	9	Wm. A. McIntosh ..	Comber.
Frontenac	1	Wm, J. Robinson ..	Kingston.
	2	P. McKim	Kingston.
	3	C. Ruttan	Sydenham.
	4	W. H. Reynolds ..	Verona.
	5	John McGrath	Sunbury.
	6	Jesse Shibley	Sharbot Lake.
Grey	1	Benjamin Allen....	Owen Sound.
	2	David Jackson, jr..	Durham.
	3	Thomas Plunket ...	Meaford.
	4	T. J. Rorke	Heathcote.
	5	J. W. Armstrong ..	Flesherton.
	6	John McDonald	Chatsworth.
	7	Duncan Campbell ..	Hanover.
	8	Richard Stevens ...	Markdale.
Haldimand	1	D. McGregor	Caledonia.
	2	David T. Rogers ..	Cayuga.
	3	T. Armour	Dunnville.
	4	R. A. Havill	Rainham
	5	Elgin Birdsall	Canboro'.
	6	C. E. Bourne	Jarvis.

COUNTY.	NO. OF DIVISION.	NAME OF CLERK.	POST OFFICE ADDRESS.
Haliburton	1	C. D. Curry	Minden.
	2	Wm. Prust	Haliburton.
	3	Stephen Kettle	Ursa.
Halton	1	Wm. Panton	Milton.
	2	R. Balmer	Oakville.
	3	Lachlan Grant	Georgetown.
	4	R. J. McNabb	Acton.
	5	Neil McPhail	Nassagaweya.
	6	James Robinson . . .	Burlington.
Hastings	1	Harford Ashley . . .	Belleville.
	2	Fras B. Prior	Wallbridge.
	3	A. B. Randall	Shannonville.
	4	T. McCann	Tweed.
	5	F. B. Parker	Stirling.
	6	Arthur W. Coe	Madoc.
	7	A. S. Valleau	Deseronto.
	9	James B. Young . . .	Trenton.
	10	Marcus H. Powell . .	Marmora.
	12	Dermott Kavanagh . .	Umfraville.
Huron	1	Charles Seager	Goderich.
	2	John Beattie	Seaforth.
	3	W. W. Farran	Clinton.
	4	A. Hunter	Brussels.
	5	Charles Snell	Exeter.
	6	James Whyard	Dungannon.
	7	John Morgan	Bayfield.
	8	James McGuire	Wingham.
	9	Joseph Cowan	Wroxeter.
	10	M. Zeller	Zurich.
	11	Wm. Lewis	Crediton.
	12	Wm. Campbell	Blyth.
Kent	1	W. B. Wells	Chatham.
	2	J. Duck	Ridgetown.
	3	S. Wallace	Dresden.
	4	Archibald Samson . .	Blenheim.
	5	D. C. McDonald . . .	Wallaceburg.
	6	George Moore	Bothwell.
	7	D. K. Farquharson . .	Fletcher.

COUNTY.	NO. OF DIVISION.	NAME OF CLERK.	POST OFFICE ADDRESS.
Lambton	1	H. M. Pouesett	Sarnia.
	2	Wm. McLeay	Watford.
	3	John Webster	Florence.
	4	William W. Stover..	Sombra.
	5	T. R. K. Scott	Florence.
	6	Martin Wattson . .	Thedford.
	7	John McRae	Mooretown.
	8	W. G. Fraser	Petrolea.
	9	Richard Code	Alvinston.
Lanark	1	R. Jamieson	Perth.
	2	W. A. Field	Lanark.
	3	F. McEwen	Carleton Place.
	4	G. F. McKimm	Smith's Falls.
	5	Alex. Graham	Pakenham.
	6	Wm. P. McEwen..	Almonte.
Leeds & Grenville	1	D. B. Jones	Brockville.
	2	J. B. White	Prescott.
	3	S. McCammon	Gananoque.
	4	Oliver Bascom	Kemptville.
	5	E. H. Whitmarsh . .	Merrickville.
	6	L. N. Phelps	Phillipville.
	7	Cyrus A. Wood	Toledo.
	8	L. S. Lewis	Newboro.
	9	Isaac C. Alguire	Athens.
	10	G. Fairbairn	Spencerville.
	11	J. B. Bellamy	North Augusta.
	12	M. J. Connolly..	Caintown.
Lennox & Add'n	1	George D. Hawley .	Napanee.
	2	Fred. W. Armstrong	Bath.
	3	Joseph A. Allison..	Adolphustown.
	4	P. Johnstone	Camden East.
	5	W. Whalen	Centreville.
	6	J. A. Timmerman..	Odessa.
	7	James Aylesworth..	Tamworth.
Lincoln	1	James B. Secord . .	Niagara.
	2	W. A. Mittleberger.	St. Catharines.
	3	Isaac Springstead . .	Abingdon.
	4	C. E. Riggins	Beamsville.

COUNTY.	NO. OF DIVISION.	NAME OF CLERK.	POST OFFICE ADDRESS.
Manitoulin	1	Samuel Jackson.....	Gore Bay.
	2	John Carruthers ..	Little Current.
	3	W. J. Tucker.....	Manitowaning.
Middlesex	1	John W. McIntosh ..	London.
	2	William Dickson ..	Parkhill.
	3	Robert J. McNamee	Lucan.
	4	W. C. Harris.....	Delaware.
	5	G. Wilson	Glencoe.
	6	Ed. Rowland	Strathroy.
	7	Ed. Thos. Shaw....	Dorchester Station.
	8	Walter R. Westlake	Arva.
	9	E. S. Jarvis	London.
Muskoka	1	T. M. Bowerman ..	Bracebridge.
	2	W. R. Tudhope....	Gravenhurst.
	3	J. R. Reece	Huntsville.
	4	Fred. D. Stubbs....	Port Carling.
Nipissing	1	J. D. Cockburn ..	Sturgeon Falls.
	2	John McMeekin ...	Mattawa.
	3	John G. McCormack	North Bay.
	4	Thomas J. Ryan....	Sudbury.
	5		
Norfolk	1	Charles E. Freeman	Simcoe.
	2	Abraham M. Tobin.	Waterford.
	3	R. Green	Windham Centre.
	4	James F. Cohoe....	Ronson.
	5	M. J. McCall.....	Vittoria.
	6	S. P. Maybee.....	Port Rowan.
	7	D. C. Brady	Houghton.
	8	Lawrence Skey	Port Dover.
Northumberland and Durham.	1	F. Cubitt	Bowmanville.
	2	S. Wilmott.....	Newcastle.
	3	G. M. Furby	Port Hope.
	4	Henry Elliott.....	Millbrook.
	5	A. G. Boswell.....	Cobourg.
	6	Thomas E. Lawless..	Grafton.
	7	S. S. Brintnell	Colborne.
	8	R. B. Macklam	Brighton.

COUNTY.	NO. OF DIVISION.	NAME OF CLERK.	POST OFFICE ADDRESS.
Northumberland and Durham..	9	R. P. Hurlburt....	Warkworth.
	10	T. R. Garratt.....	Wooler.
	11	D. Kennedy	Campbellford.
Ontario	1	D. C. Macdonell....	Whitby.
	2	M. Gleeson.....	Greenwood.
	3	J. W. Burnham.....	Port Perry.
	4	Jos. E. Gould.....	Uxbridge.
	5	George Smith.....	Cannington.
	6	G. F. Bruce	Beaverton.
	7	F. J. Gillespie	Uptergrove.
Oxford.....	1	F. W. Macqueen ..	Woodstock.
	2	Charles K. Currey..	Drumbo.
	3	James Munro.....	Embro.
	4	James Barr	Norwich.
	5	James Stevens	Ingersoll.
	6	John C. Ross	Tilsonburg.
Parry Sound ..	1		
	2	David Patterson ..	McKellar P.O.
	3	William Ditchburn.	Rosseau.
	4	Walter Sharpe	Burk's Falls.
	5	Samuel G. Best....	Maganetawan.
	6	R. B. Maw.....	Commanda.
	7	James Dunn	Sundridge.
Peel	1	J. W. Main	Brampton.
	2	Thomas K. Beatty..	Streetsville.
	3	John Harris	Caledon.
	4	David Pearce.....	Bolton.
Perth	1	D. B. Burritt.....	Stratford.
	2	George K. Matheson	Mitchell.
	3	E. Long	St. Mary's.
	4	G. Brown	Shakespeare.
	5	Thomas Trow.....	Milverton.
	6	F. W. Hay.....	Listowel.
Peterborough ..	1	Francis James Bell.	Peterborough.
	2	Thomas Fraser	Norwood.
	3	James McNeil	Keene.
	4	W. Sherin	Lakefield.
	5	C. R. D. Booth	Apsley.

COUNTY.	NO. OF DIVISION.	NAME OF CLERK.	POST OFFICE ADDRESS.
Prescott & Russ'll	1	David Buchan	L'Original.
	2	John Shields	Vankleek Hill.
	3	W. Allison	Stardale.
	4	Joseph Belanger . .	Plantagenet.
	5	J. S. Cameron	Cumberland.
	6	A. Carson	Russell.
	7	M. J. Costello	Hawkesbury.
	8	J. Downing	Fournier.
	9	F. W. Langrell	Alfred.
	10	Telesphore Rochon.	Clarence Creek.
	11	Peter Stewart	Grant.
Prince Edward.	1	G. C. Curry	Picton.
	2	Henry Hul. Haight	Mllford.
	3	Charles H. Wright.	Demorestville.
	4	William C. Delong .	Ameliasburg.
	5	John W. Clarke	Wellington.
	6	A. B. Saylor	Bloomfield.
	7	J. M. Cadman	Consecon.
	8	B. E. Harrison	Waupoos.
Rainey River . .	1	P. H. Clark	Rat Portage.
	2	William Wilson	Fort Francis.
Renfrew	1	W. C. Irving	Pembroke.
	2	Hugh R. Dunn	Beachburg.
	3	George Eady, jr. . . .	Renfrew.
	4	George E. Neilson . .	Arnprior.
	5	Thomas F. Gorman.	Shamrock.
	6	James Reeves	Eganville.
	7	Robert Allan	Cobden.
	8	J. C. Gurney	Rockingham.
Simcoe	1	J. C. McNab	Barrie.
	2	Thomas S. Graham.	Bradford.
	3	George Chrystal	Beeton.
	4	R. G. Campbell . . .	Collingwood.
	5	A. Craig	Craighurst.
	6	J. P. Henderson	Orillia.
	7	J. A. Mather	New Lowell.
	8	J. G. Hood	Alliston.
	9	Andrew McNamara	Penetanguishene.
	10	J. C. Steele	Coldwater.

COUNTY.	No. of DIVISION.	NAME OF CLERK.	POST OFFICE ADDRESS.
Stormont, Dundas & Glengarry	1	G. H. McGillivray ..	Williamstown.
	2	Dougall B. McMillan	Alexandria.
	3	C. J. Mattice	Cornwall.
	4	Asaph Dawson	Dickinson's Landing
	5		Morrisburg.
	6	J. N. Tuttle	Iroquois.
	7	W. J. Ridley	South Mountain.
	8	J. A. Cockburn	Crysler.
	9	Duncan C. McRae ..	North Lancaster.
	10	W. Rae	Chesterville.
	11	D. McIntosh	Strathmore.
	12	John D. McIntosh ..	Dominionville.
Thunder Bay ..	1	Neil McDougall ..	Port Arthur.
	2	John Aikens	English River.
	3	William McLean ..	Fort William.
Victoria	1	Peter McIntyre ..	Woodville.
	2	Edward D. Hand ..	Fenelon Falls.
	3	Irvine Junkin	Bobcaygeon.
	4	Jas. D. Thornton ..	Omeme.
	5	O. J. McKibbin	Lindsay.
	6	J. F. Cunnings	Oakwood.
	7	A. C. Graham	Victoria Road.
Waterloo	1	A. J. Peterson	Berlin.
	2	James D. Webster ..	Preston.
	3	Thomas Field	Galt.
	4	J. Allchin	New Hamburg.
	5	Alfred Boomer	Linwood.
	6	Wm. H. Winkler ..	St. Jacob's.
	7	W. D. Watson	Ayr.
Welland	1	G. L. Hobson	Welland.
	2	Paul J. Wilson	Marshville.
	3	Ernest Cruikshank ..	Fort Erie.
	4	J. A. Orchard	Niagara Falls, South
	5	T. F. Conlon, jr.	Thorold.
	6	A. K. Schofield	Port Colborne.

COUNTY.	No. of DIVISION	NAME OF CLERK.	POST OFFICE ADDRESS.
Wellington	1	George Howard	Guelph.
	2	William Nicoll	Morrison.
	3	Hugh Black	Rockwood.
	4	T. W. Thomson	Fergus.
	5	Thomas Young	Erin.
	6	Henry Clarke	Elora.
	7	L. R. Adams	Drayton.
	8	Daniel Driscoll	Arthur.
	9	Joseph Patullo	Orangeville.
	10	John Livingston	Harriston.
	11	J. C. Wilkes	Mount Forest.
Wentworth	1	H. T. Bunbury	Hamilton.
	2	F. D. Suter	Dundas.
	3	Hugh Thompson	Waterdown.
	4	W. McDonald	Rockton.
	5	A. G. Jones	Stoney Creek.
	6	L. A. Gurnett	Ancaster.
	7	J. McClement	Glanford.
	8	Samuel C. Wright . . .	Binbrook.
	9	R. L. Gunn	Hamilton.
York	1	A. McL. Howard	Toronto.
	2	J. Stephenson	Unionville.
	3	J. M. Lawrence	Richmond Hill.
	4	D. Lloyd	Newmarket.
	5	Warren P. Cole	Sutton West.
	6	A. Armstrong	King City.
	7	John Natrass	Woodbridge.
	8	John Linton	Toronto Junction.
	9	J. H. Richardson . . .	West Hill.
	10	E. H. Duggan	Toronto.

TABLE C.

LIST of Division Court Bailiffs, their Post Office Address, the County and number of Division in which their Courts are situated, for the Province of Ontario, up to 31st December, 1893, and changes up to date.

COUNTY.	NO. OF DIVISION.	NAME OF BAILIFF.	POST OFFICE ADDRESS.
Algoma	1	Robert Rush	Sault Ste. Marie.
	2	John Knight	Bruce Mines.
	3	Fred. Leighfield....	Thessalon.
	4	William Irving....	Webbwood.
	6	Daniel McPhail....	Marksville, St. Jos. I.
Brant	1	Joseph Jackson	Brantford.
	2	A. Huson	Paris.
	3	David B. Wood	St. George.
	4	Daniel Dunn	Burford.
	5	A. M. Malcolm	Scotland.
Bruce	1	M. Thompson.....	Walkerton.
	2	{ P. Corrigan.....	Holywood.
		{ John Farquharson.	Teeswater.
	3	Alex. Campbell	Kincardine.
	4	W. W. Hogg.....	Paisley.
	5	M. Hunter	Port Elgin.
	6	Gore Leggett.....	Underwood.
	7	Charles A. Richards	Tara.
	8	H. Trout.....	Warton.
	9	John Ritchie	Ripley.
	10	Edward Barley	Lion's Head.

COUNTY.	No. of DIVISION.	NAME OF BAILIFF.	POST OFFICE ADDRESS.
Carleton	1	{ E. A. Lapierre....	Ottawa.
		{ John Whitton	Ottawa.
	2	W. H. Hamilton ..	Richmond.
	3	William Falls	Carp.
	4	Ed. W. Owens.....	Antrim.
	5	Wesley Hicks	Kars.
	6	John Watt.....	Metcalf.
	7	A. Wilson	Hintonburgh.
Dufferin	1	James McQuarrie ..	Orangeville.
	2	E. F. Bowes	Shelburne.
	3	A. Cauthers	Stanton.
	4	James McQuarrie ..	Orangeville.
	5	Alfred Finbow.....	Grand Valley.
Elgin	1	W. W. White	Aylmer.
	2	Henry Thornton ...	St. Thomas.
	3	Henry Thornton ...	St. Thomas.
	4	Duncan McGregor..	Eagle.
Essex	1	Alois Master	Sandwich.
	2	{ William Kelley....	Amherstburg.
		{ C. Wright.....	Amherstburg.
	3	John S. Middough..	Kingsville.
	4	W. L. Hughson....	Harrow.
	5	Jesse T. Brown	Leamington.
	6	Charles F. Cornetel.	Belle River.
	7	{ Fred A. Malloux ..	Windsor.
		{ J. S. Askew	Windsor.
	8		Essex.
	9	Raphael Marion....	Chevalier.
Frontenac	1	{ George Greenwood .	Wolfe Island.
		{ J. A. Gardner	Kingston.
	2	John A. Gardner ..	Kingston.
	3	Edmund G. Ruttan.	Sydenham.
	4	Isaac L. Smith	Verona.
	5	William J. Arthur..	Battersea.
	6	{ Matthew W. Price.	Mountain Grove.
		{ Samuel Mitchell ..	Plevna.

COUNTY.	NO. OF DIVISION.	NAME OF BAILIFF.	POST OFFICE ADDRESS.
Grey	1	James Sharpe, jr. . . .	Owen Sound.
	2	James Carson	Durham.
	3	George Brown	Meaford.
	4	George Mitchell	Clarksburg.
	5	A. S. Vandusen	Flesherton.
	6	W. B. Simpson	Chatsworth.
	7	John Small	Hanover.
	8	W. G. Pickell	Markdale.
Haldimand	1	Daniel T. Hind	Caledonia.
	2	Andrew Finlan	Cayuga.
	3	W. R. McIndoe	Dunnville.
	4	David Byers	Selkirk.
	5	Eli Piper	Canboro'.
	6	F. Hartwell	Jarvis.
Haliburton	1	R. C. Garratt	Minden.
	2		Haliburton.
	3	Adam Graham	Ursa.
Halton	1	J. A. Fraser	Milton.
	2	Robert Lucas	Oakville.
	3	Alfred Benham	Georgetown.
	4	John Lawson	Acton.
	5	Jacks'n Worthington	Campbellville.
	6	J. W. Henderson . .	Burlington.
Hastings	1	{ John H. Gordon . .	Belleville.
		{ Jones Phillips . .	Foxboro'.
	2	W. D. Ketcheson . .	Wallbridge.
	3	W. E. Pearsall	Shannonville.
	4	W. J. Howell	Tweed.
	5	C. Butler	Stirling.
	6	John Allen Huff . .	Madoc.
	7	J. G. Ferguson	Deseronto.
	9	{ Wm. Henry Garratt	Trenton.
		{ Lewis Cruikshank . .	Trenton.
	10	James C. Bowen	Marmora.
	12	{ Walter Mullett	Bancroft.
		{ B. H. Sweet	Bancroft.

COUNTY.	NO. OF DIVISION.	NAME OF BAILIFF.	POST OFFICE ADDRESS.
Huron	1	John Knox	Goderich.
	2	Joseph D. Brine	Seaforth.
	3	F. Dickenson	Clinton.
	4	Finlay S. Scott	Brussels.
	5	John Gill	Exeter.
	6	Joseph Mallough . . .	Dungannon.
	7	J. Ferguson	Bayfield.
	8	Francis Patterson . . .	Wingham.
	9	John Brethauer	Wroxeter.
	10	Phillip Sipple	Zurich.
	11	J. Beanes	Crediton.
	12	James Davis	Blyth.
Kent	1	{ Charles J. Moore . . .	Chatham.
		{ T. H. Nelson	Chatham.
	2	William Tetzell	Ridgetown.
	3	Alex. Cuthbert	Dresden.
	4	{ W. Fellows	Blenheim.
		{ John M. Burke	Blenheim.
	5	Thomas Forhan	Wallaceburg.
	6	{ G. A. Bobier	Thamesville.
		{ S. J. Thomas	Bothwell.
	7	M. Dillon	Merlin.
Lambton	1	Robert Miller	Sarnia.
	2	J. F. Elliott	Watford.
	3	Richard L. Bobier . . .	Florence.
	4	N. Cornwall	Sombra.
	5	Eugene Mason	Wyoming.
	6	J. G. Braddon	Thedford.
	7	John McGill	Corunna.
	8	John Sinclair	Petrolia.
	9	W. Fitzpatrick	Alvinston.
Lanark	1	{ P. J. Lee	Perth.
		{ James Patterson . . .	Perth.
	2	James D. McInnes . . .	Lanark.
	3	John McPherson	Carleton Place.
	4	James Murray	Smith's Falls.
	5	Arthur H. Ellis	Pakenham.
	6	John Slattery	Almonte.

COUNTY.	No. of DIVISION.	NAME OF BAILIFF.	POST OFFICE ADDRESS.
Leeds & Grenville	1	{ Henry McPhail ..	Brockville.
		{ Uri Marshall	Brockville.
	2	Charles H. Rowe ..	Prescott.
	3	Ed. McE. Hiscocks ..	Gananoque.
	4	J. Dickinson	Kemptville.
	5	P. Dowdall	Merrickville.
	6	{ W. H. Denaut, jr. .	Delta.
		{ S. R. Ransom	Delta.
	7	R. Richards	Frankville.
	8	{ Chester Stewart ..	Newboro.
		{ Delorma Deacon ..	Westport.
	9	G. W. Brown	Athens.
Lennox & Add'n	10	{ William Stitt, jr. .	Spencerville.
		{ James P. Lawrence.	Spencerville.
	11	S. J. Whaley	North Augusta.
	12	W. J. Mallory	Mallorytown.
Lincoln	1	Z. Ham	Napanee.
	2	R. R. Finkle	Bath.
	3	D. Daverne	Adolphustown.
	4	Z. Ham	Napanee.
	5	P. Vandewater	Centreville.
	6	John W. Denyes ..	Odessa.
	7	{ P. F. Carscallen ..	Tamworth.
Lincoln		{ Andrew Cowan ..	Vennachar.
		{ Thomas Neal	Cloyne.
Lincoln	1	P. Henigan	Niagara.
	2	Richard E. Boyle ..	Merritton.
	3	A. D. Lacy	Smithsville.
	4	James F. Carter ..	Beamsville.
Manitoulin	1	Neil McLean, jr.	Gore Bay.
	2	D. McKenzie	Little Current.
	3	John Gorley	Manitowaning.
Middlesex	1	John Burns	211 Richmond st.,
	2	Edward Manes	Parkhill. [London.
	3	G. W. Hodgins	McGillivray.
	4	Henry Lockwood ..	Delaware.
	5	James Poole	Strathburn.
	6	Malcolm McIntyre ..	Strathroy.

COUNTY.	No. OF DIVISION.	NAME OF BAILIFF.	POST OFFICE ADDRESS.
Middlesex	7	John Beverley	Dorchester Station.
	8	Charles Smith	Arva.
	9	L. W. Stevens . . .	London.
Muskoka	1	W. J. Hill	Bracebridge.
	2	T. M. Robinson	Gravenhurst.
	3	William Rumsey . .	Huntsville.
	4	E. M. Davidson	Port Carling.
Nipissing	1	Louis Joudouin	Sturgeon Falls.
	2	Ed. J. Smith	Mattawa.
	3	Charles Lamarche . .	Mattawa.
	4	M. J. Powell	Sudbury.
	5		
Norfolk	1	E. G. Wells	Simcoe.
	2	Edward Grace	Waterford.
	3	D. C. Wood	Simcoe.
	4	Robert Power	Delhi.
	5	Joseph W. Shearer . .	Vittoria.
	6	Henry C. Ellis	Port Rowan.
	7	H. J. Mitchener	Clear Creek.
	8	Hiram Fairchild	Port Dover.
Northumberland and Durham.	1	Henry Metcalf	Bowmanville.
	2	N. A. Jerome	Orono.
	3	John Grimson	Port Hope.
	4	William Carveth . .	Millbrook.
	5	O. Dean	Cobourg.
	6	Thomas Patterson . .	Grafton.
	7	John Reives	Colborne.
	8	Jay Chapin	Brighton.
	9	Luke Berry	Warkworth.
	10	Arthur Terrill	Wooler.
	11	Thomas G. Gillespie . .	Campbellford.
Ontario	1	J. W. Palmer	Whitby.
	2	Levi McKay	Greenwood.
	3	James D. Paxton . .	Port Perry.
	4	J. C. Widdifield	Uxbridge.
	5	R. J. Harwood	Cannington.
	6	James C. Edgar	Beaverton.
	7	Joseph Fox	Millington.

COUNTY.	NO. OF DIVISION.	NAME OF BAILIFF.	POST OFFICE ADDRESS.
Oxford	1	{ M. Virtue	Woodstock.
		{ M. Virtue, jr.	Woodstock.
	2	L. S. Kennedy	Richwood.
	3	George C. McKay ..	Embro.
	4	William Stroud	Norwich.
	5	W. H. Cody	Ingersoll.
	6	M. Dillon	Tilsonburg.
Parry Sound...	1	{ T. W. George	Parry Sound.
		{ Duncan McRae	French River.
	2	W. J. Moffat	McKellar.
	3	James G. Dixon	Rosseau.
	4	Charles W. McKague	Burk's Falls.
	5	Joseph Wilson	Maganetawan.
	6	David Ricker	Commanda.
	7	Archibald McDonald	Sundridge.
Peel	1	Geo. William Broddy	Brampton.
	2	John H. Glendening	Streetsville.
	3	James K. Leslie	Caledon.
	4	J. C. Switzer	Albion.
Perth	1	{ Thomas Tobin	Stratford.
		{ Thomas S. Tobin ..	Stratford.
	2	J. S. Coppin	Mitchell.
	3	William Box	St. Mary's.
	4	J. W. Donaldson	Shakespeare.
	5	W. D. Weir	Milverton.
	6	W. H. Hay	Listowel.
Peterborough ..	1	Joseph Griffin	Peterborough.
	2	A. R. Anderson ..	Norwood.
	3	Joseph Elmhirst ..	Keene.
	4	Thomas Nicolls	Lakefield.
	5	Thomas McIlmoyle ..	Burleigh.
Prescott & Russ'll	1	S. Wright	L'Orignal.
	2	Thomas Shields	Vankleek Hill.
	3	P. Kelly	St. Eugene.
	4	Wm. Adolph. McKay	Plantagenet.
	5	Docitte Lavergne ..	Cumberland.
	6	Thomas Yonge	Russell.
	7	S. Wright	L'Orignal.

COUNTY.	NO. OF DIVISION.	NAME OF BAILIFF.	POST OFFICE ADDRESS.
Prescott & Russell	8	{ C. Gates	Fournier.
		{ Napoleon Dupuis . .	St. Isidore.
	9	Jules Boileau	Alfred.
	10	{ John A. Dent	Rockland.
		{ Frs. Menard	Clarence Creek.
	11	E. M. Casselman . .	Casselman.
Prince Edward.	1	A. M. Buchanan . .	Picton.
	2	Marshall Palen	Milford.
	3	George Farrell	Demorestville.
	4	A. Harvey	Ameliasburg.
	5	Charles Herrington .	Wellington.
	6	Alex. McDonald . . .	Hallowell.
	7	Harman W. Weeks .	Consecon.
	8	E. A. Williams	Waupoose.
Rainy River . .	1	W. H. McKay	Rat Portage.
	2	William Neil	Fort Francis.
Renfrew	1	{ George Mitchell . .	Pembroke.
		{ James Millar	Pembroke.
	2	{ A. Acheson	Westmeath.
		{ John Beaupre	Beachburg.
	3	{ S. O'Gorman	Renfrew.
		{ Wm. Wilson	Arnprior.
	4	John Lyon	Arnprior.
	5	Thomas J. Gorman . .	Shamrock.
	6	Hugh Gallagher . . .	Eganville.
	7	George Marshall . . .	Cobden.
	8	John Hartney	Rockingham.
Simcoe	1	John Weaymouth . .	Barrie.
	2	L. Algeo	Bradford.
	3	John Wilson	Tottenham.
	4	A. W. S. Cunningham	Collingwood.
	5	James Martin	Hillsdale.
	6	J. G. Wilson	Orillia.
	7	Andrew Patton	New Lowell.
	8	W. H. McDougall . .	Alliston.
	9	William Pratt	Penetanguishene.
	10	Thomas Blaney	Coldwater.

COUNTY.	NO. OF DIVISION.	NAME OF BAILIFF.	POST OFFICE ADDRESS.
Stormont, Dun- das & Glengarry	1	J. A. Robertson	Williamstown.
	2	Colin A. McLauren . . .	Dalkeith.
	3	(D. McDonald	Cornwall.
		(Homer Stiles	Cornwall.
	4	(H. Bush	Lunenburg.
		(Simon Warner	Osnabruck Centre.
	5	Jacob Hopper	Morrisburg.
	6	Wm. A. Coons	Iroquois.
	7	Edward Barclay	Inkerman.
	8	Samuel Dillobough . .	Crysler.
	9	Wm. Cameron	Lancaster.
	10	A. Stallmayer	Chesterville.
Thunder Bay . .	11	Martin Maloney . . .	Monckland.
	12	H. A. Conroy	Maxville.
	1		Port Arthur.
Victoria	2	Joseph McKinnon . .	English River.
	3		Port Arthur.
	1	Arch. J. Smith	Woodville.
	2	Stephen Nevison . . .	Fenelon Falls.
	3	Thomas Cheetham . . .	Bobcaygeon.
	4	William Glass	Omeme.
	5	Chas. W. Silver	Lindsay.
Waterloo	6	Wm. H. McLaughlin . .	Oakwood.
	7	William Boden	Victoria Road.
	1	J. Klippert	Berlin.
	2	Peter Gillies	Galt.
	3	Peter Gillies	Galt.
	4	Alex. Fraser	New Hamburg.
	5	Benj. J. Ballard	Hawkesville.
Welland	6	Benj. J. Ballard	Hawkesville.
	7	Ed. Bouchier	Washington.
	1	Casper Ramey	Welland.
	2	John S. Stayzer	Marshville.
	3	J. Teal	Bertier.
	4	J. D. Fralick	Niagara Falls, South
	5	Lanson Theal	Thorold.
	6	Elias Augustine	Port Colborne.

COUNTY.	No. of DIVISION.	NAME OF BAILIFF.	POST OFFICE ADDRESS.
Wellington	1	John H. Doughty ..	Guelph.
	2	John H. Doughty ..	Guelph.
	3	John W. Farries ...	Rockwood.
	4	Wm. M. Frank	Fergus.
	5	James Broddy	Erin.
	6	Wm. Findlay	Elora.
	7	S. B. Trask	Glen Allan.
	8	David T. Small	Arthur.
	9	James McQuarrie ..	Orangeville.
	10	Henry Torrance	Harriston.
	11	A. Godfrey	Mount Forest.
Wentworth	1	Wm. Hunter	Hamilton.
	2	F. P. Hanes	Dundas.
	3	Wm. Harvey	Waterdown.
	4	Emerson Clement ..	Troy.
	5	J. C. Moore	Stoney Creek.
	6	F. P. Hanes	Dundas.
	7	A de C. Boyes ...	Binbrook.
	8	A de C. Boyes ...	Binbrook.
	9	J. Greenfield	Hamilton.
York	1	{ J. M. Wingfield ..	Toronto.
		{ St. John Severs	Toronto.
	2	P. L. Barkey	Ringwood.
	3	P. L. Barkey	Ringwood.
	4	{ Wm. Malloy	Newmarket.
		{ Amos H. Wilson ..	Newmarket.
	5	R. A. Sheppard	Sutton, West.
	6	James W. Crossley ..	King City.
	7		
	8		
	9	W. Luke	West Hill.
	10	Peter Small	Toronto.

TABLE D.

*Division Courts and the Limits of the respective Divisions
in the Province of Ontario.*

DISTRICT OF ALGOMA.

1.—Bounded west by Thunder Bay District, 85th parallel of west longitude, and east by Barr river, including all the islands in front.

2.—Bounded west by Barr river, and east by the westerly boundary of the townships of Thessalon river, Kirkwood, Bridgeland and Houghton, and the boundary line of the last named three townships, produced northerly.

3.—Bounded west by the westerly boundary of the townships of Thessalon river, Kirkwood, Bridgeland and Houghton, and the boundary line of the last named three townships, produced northerly, and on the east by the eastern boundary of the township of Sprague, produced northerly.

4.—Bounded on the west by the boundary line between the townships of Sprague and Lewis, produced north to the northern boundary of the District of Algoma, thence along the northern boundary of the said district, thence south along said eastern boundary to the waters of Lake Huron, thence westerly along the southern boundary of the District of Algoma, to a point opposite the boundary line between the townships of Sprague and Long, thence northerly to said last mentioned boundary line, thence easterly along the said southern boundary line of the township of Sprague to the place of beginning.

6.—Consisting of St. Joseph's Island.

COUNTY OF BRANT.

1.—The city of Brantford and that part of the township of Brantford not included in the other divisions hereinafter described. The townships of Onondago, Tuscarora, and that part of the township of Brantford lying south of the main road from Brantford to Hamilton and east of Fairchild's Creek.

2.—The Town of Paris and that part of South Dumfries west of the line between lots 18 and 19, and that part of the first concession of the township of Brantford lying west of a continuation of the last mentioned line.

3.—The remainder of the township of South Dumfries and of the first concession of the township of Brantford.

4.—The ten northern concessions of the township of Burford, and that part of the 2nd, 3rd, 4th and 5th concessions of the township of Brantford, west of the line between lots numbers 10 and 11, and that portion of the Kerr Tract west of a continuation of the last mentioned line.

5.—The township of Oakland, the four southern concessions of the township of Burford and lots numbers 1 to 5, inclusive, in the ranges east and west of the Mount Pleasant Road, in the Township of Brantford, adjoining the township of Oakland.

COUNTY OF BRUCE.

1.—The town of Walkerton and township of Carrick, and all the township of Brant south of the line between the 11th and 12th concessions.

2.—The village of Teeswater, all the township of Culross, and that part of the township of Greenock lying south of the line between the 11th and 12th concessions, and village of Lucknow, and all of Kinloss township not in number 9.

3.—The town of Kincardine and that part of the township of Kincardine lying south of a line drawn between the 9th and 10th concessions.

4.—The village of Paisley and that part of the township of Brant lying north of a line drawn between the 11th and 12th concessions of the township of Brant.

All the township of Elderslie, except lots 16 to 36, both inclusive, in concessions 12, 13 and 14 of said township.

All the township of Greenock lying north of a line drawn between concessions 11 and 12 of said township.

Lots 26 to 35, both inclusive, in the 8th, 9th, 10th, 11th, 12th, 13th and 14th concessions of the township of Bruce; and that part of the township of Saugeen lying east of a line between lots 28 and 29, and south of the production of the town line between the townships of Arran and Elderslie to the Saugeen river.

5.—All Saugeen township not included in No. 4, all that part of the township of Arran lying west of a line between lots 10 and 11 and north of Arran Lake and the outlet of said lake, and that part of the township of Amabel lying south of the 10th concession of Amabel, and the villages of Port Elgin and Southampton.

6.—The village of Tiverton, and that portion of Kincardine Township north of a line drawn between concessions 9 and 10 in said township, and all the township of Bruce, except that part included in No. 4.

7.—That part of the township of Elderslie not included in No. 4, and that part of Arran township not included in No. 5, and the village of Tara.

8.—The village of Wiarton, the township of Albemarle, and that part of the township of Amabel lying north of a line between the 9th and 10th concessions.

9.—All the township of Huron, and that part of the township of Kinloss, described as follows :—

Commencing at the boundary line between said townships of Huron and Kinloss, at a point at which the blind line between the 12th concession of said township of Kinloss and the third range south of the Durham Road, in the said township of Kinloss, commences; thence in an easterly direction along said blind line to the westerly side of the Goderich Gravel Road, or

the 10th side line of said township of Kinloss ; thence along said 10th side line in a southerly direction to the boundary line of the county of Huron ; thence in a westerly direction along said last mentioned boundary to the said line between Huron and Kinloss aforesaid ; thence northerly along said last named boundary line to the place of beginning.

10.—All the townships of Eastnor, Lindsay and St. Edmunds.

COUNTY OF CARLETON.

1.—Comprising all the city of Ottawa, and the township of Gloucester, to lot 15, Rideau front and concessions 1 to 6, inclusive, Ottawa front and the islands in the Ottawa river opposite thereto.

2.—All the township of Goulbourn ; the 8th, 9th and 10th concessions of the township of Marlborough ; all that portion of the township of Nepean south of the river Goodwood ; and the 4th, 5th and 6th concessions thereof north of the said river to the boundary line between lots 20 and 21 in the last mentioned concessions.

3.—All the township of Huntley, and all the township of March, except lots 1 to 5, inclusive, in concessions 1, 2, 3 and 4 thereof.

4.—All the townships of Fitzroy and Torbolton.

5.—All the townships of North Gower ; Long Island in the Rideau river, and the 1st, 2nd, 3rd, 4th, 5th, 6th and 7th concessions of the township of Marlborough.

6.—All the township of Osgoode ; the 6th, 7th and 8th concessions Ottawa front, and from lots 16 to 30, inclusive, of the Rideau front of the township of Gloucester.

7.—All the township of Nepean except the city of Ottawa, and the part of the said township lying south of the river Goodwood, and concessions 4, 5 and 6 north of said river Goodwood to the boundary line between lots 20 and 21 in said last mentioned concessions, and including also lots 1 to 5, inclusive, in concessions 1, 2, 3 and 4 in the township of March.

COUNTY OF DUFFERIN.

1.—The town of Orangeville, the township of East Garafaxa, and all that portion of the township of Amaranth lying south of the southerly boundary of lot number 26, in each concession of the township of Amaranth.

2.—The village of Shelburne, the township of Melancthon, and all that portion of the township of Amaranth lying north of the southerly boundary of lot number 26, in each concession of the township of Amaranth.

3.—The township of Mulmur.

4.—The township of Mono.

5.—The township of East Luther.

COUNTY OF ELGIN.

1.—The townships of Bayham, Malahide and South Dorchester.

2.—The townships of Southwold and Yarmouth (except the city of St. Thomas).

3.—The city of St. Thomas.

4.—The townships of Aldborough and Dunwich.

COUNTY OF ESSEX.

1.—Town of Sandwich and township of Sandwich East.

2.—Town of Amherstburg and townships of Alden and Anderdon.

3.—The village of Kingsville, and all that part of the township of Gosfield not included in Division No. 8.

4.—The township of Colchester South, and all that part of Colchester North, south of the 9th concession, exclusive of the said concession and the lots on both sides of Malden street.

5.—Township of Mersea and village of Leamington.

6.—The township of Rochester, the village of Belle River, the first concession of the township of Maidstone, and all north of the Middle Road in said township of Maidstone.

7.—Town of Windsor, the town of Walkerville, and all that part of Sandwich East, north of the Talbot street range.

8.—The town of Essex, all that part of the township of Maidstone lying west of the first concession and south of the Middle Road ; so much of Sandwich East as is south of Talbot street, including the lots on both sides of said street to Nos. 306 and 307 ; all of Colchester north of the 9th concession, including said concession and lots on both sides of Malden street, and all that part of Gosfield lying north of concession 6, and extending as far east from the limits between Gosfield and Colchester as lot No. 12, including such lot in each concession north of concession 6, inclusive.

9.—The township of Tilbury West.

COUNTY OF FRONTENAC.

1.—City of Kingston, township of Garden Island, Wolf Island, Howe Island and part of the township of Pittsburg.

2.—Cataraqui, comprising the township of Kingston and the village of Portsmouth.

3.—Loughboro', comprising the townships of Loughboro' and Bedford.

4.—Verona, comprising the townships of Portland and Hinchinbrooke.

5.—Sunbury, comprising the township of Storrington and part of the township of Pittsburg.

6.—Comprising the townships of Kennebec, Olden, Oso, Barrie, Clarendon, Palmerston, Miller, North Canonto and South Canonto.

COUNTY OF GREY.

1.—The town of Owen Sound, the village of Brook, and the townships of Derby, Keppel, Sarawak and Sydenham.

2.—The town of Durham, the township of Egremont, and those portions of the townships of Bentinck, Normanby and Glenelg as follows:—That part of the township of Bentinck lying east of the line between lots 30 and 31 in the 1st, 2nd and 3rd concessions south of the Durham road, and in concessions 1, 2 and 3 north of the Durham road, and east of the line between lots 15 and 16 in concessions 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 thereof. That part of the township of Normanby lying east of the line between lots 20 and 21, in the 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 17th and 18th concessions, and all the township of Glenelg, excepting that portion lying east of the line between lots 10 and 11 in the 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th and 15th concessions thereof.

3.—The town of Meaford, the township of St. Vincent, and that part of the township of Euphrasia lying west of the line between the 6th and 7th concessions and north of the line between lots 15 and 16.

4.—The township of Collingwood and the east half of the township of Euphrasia, excepting that part thereof lying west of the line between the 4th and 5th concessions, and south of the lots between lots 12 and 13, and east half of the township of Osprey.

5.—The township of Proton, the west half of the township of Osprey, and those parts of the township of Artemesia, consisting of the ranges of lots lying parallel to the Toronto and Sydenham road, and south of the line between lots 130 and 131, and concessions 1, 2 and 3 south of the Durham road, and 1, 2, 3, 4, 5, 6, north of the said Durham road, and those portions of concessions 7, 8 and 9 lying east of the ranges of lots parallel with the Toronto and Sydenham road, and those portions of concessions 10, 11, 12, 13 and 14 lying east of the line between lots 30 and 31.

6.—The township of Sullivan and the township of Holland, excepting those portions of concessions 9, 10, 11 and 12 lying south of the line between lots 15 and 16, and those portions of concessions 7 and 8 west of the range of lots lying parallel with the Toronto and Sydenham road, and south of the line between lots 50 and 51.

7.—All the lots from 1 to 30, inclusive, in the three concessions south, and the three concessions north of the Durham road, in the said township of Bentinck ; and all the lots from 1 to 15, inclusive, in the 12th concession, from the 4th to the 15th concessions, inclusive, in the township of Normanby aforesaid.

8.—All the lots from 51 to 130, inclusive, in all the concessions parallel, to (and being north-east and south-west), of the Toronto and Sydenham road, in the townships of Artemesia, Glenelg and Holland aforesaid ; all lots to the westward of the dividing line between lots 30 and 31, in all the concessions from 10 to 14, inclusive, and all the lots from 1 to 5 in the 7th, 8th and 9th concessions, inclusive, which lie to the south-west of the 3rd concession, south-west of the said Toronto and Sydenham road, in the said township of Artemesia ; all the lots from 1 to 12, inclusive, in concessions 5 and 6, and the lots from 1 to 15, inclusive, in the concessions from 7 to 12, inclusive, in the township of Euphrasia ; all lots south of the allowance for road between lots 15 and 16 in the 9th, 10th, 11th and 12th concessions, and from lots 25 to 30, inclusive, in the 7th concession, and lots 28, 29 and 30, in the 8th concession of the said township of Holland ; and all the lots lying east of the allowance for road between lots 10 and 11, in the concessions from 7 to 15, inclusive, in the township of Glenelg.

COUNTY OF HALDIMAND.

1.—All the township of Seneca, except the 1st and 2nd concessions, the Young tract, and the property of the late Richard Martin, and the late Robert Weir ; all the township of Oneida, except the first range north of the Cayuga line ; the Dennis tract and the lots southerly of said tract.

2.—The whole of the township of North Cayuga, except that portion thereof lying north-east of said line between lots 12 and 13; the 1st and 2nd concessions of the township of Seneca, excepting that portion thereof lying north-east of the side line between lots 12 and 13; the Young tract, and the lands of the late Robert Weir and the late Richard Martin, Esquires; the first range of Oneida and north of Cayuga line: also the Dennis tract and river lots lying south.

3.—The townships of Moulton, Sherbrooke and Dunn, including the village of Dunnville.

4.—The townships of South Cayuga and Rainham.

5.—The township of Canboro, and those portions of North Cayuga and Seneca not included in the other divisions.

6.—The township of Walpole.

COUNTY OF HALIBURTON.

1.—The townships of Glamorgan and Snowden, except that portions of both included in the 3rd division, and all of the townships of Snowden, Lutterworth, Minden, Anson, Stanhope, Hinton, Sherbourne and McClintock.

2.—The townships of Dysart, Guilford, Havelock, Livingstone, Lawrence, Eyre, Harburn, Dudley, Harcourt, Bruton, Clyde, and Nightingale, and that portion of Monmouth not included in the 3rd division.

3.—The township of Cardiff, the township of Monmouth (except lots 1 to 19, inclusive,) in the 13th, 14th, 15th, 16th and 17th concessions; the south 12 concessions of the township of Glamorgan, and from lot 21, inclusive, to the eastern boundary in the south six concessions of Snowden.

COUNTY OF HALTON.

1.—All the territory comprised in the new survey of the township of Trafalgar, and the first ten lots in concessions 1, 2, 3, 4, 5 and 6 in the township of Esquesing, and the first five lots in concessions 7, 8, 9, 10 and 11 in said township.

2.—That part of the township of Trafalgar known as the Old Survey.

3.—All the rest of the territory comprised in concessions, 8, 9, 10 and 11 in the township of Esquesing not comprised in the first division.

4.—All the rest of the territory comprised in concessions 1, 2, 3, 4, 5 and 6 in the township of Esquesing.

5.—The township of Nassagaweya.

6.—The township of Nelson.

COUNTY OF HASTINGS.

1.—To comprise the city of Belleville and the township of Thurlow.

2.—To comprise all that part of the township of Sidney which lies east of the line between lots Nos. 6 and 7 in the several concessions and south of the 9th concession.

3.—The township of Tyendinaga, except that part called Deseronto.

4.—The township of Hungerford.

5.—All that part of the township of Sidney which lies to the north of the 8th concession, and to the east of lot No. 6 in each concession north of the 8th concession, and all that part of the township of Rawdon which lies to the south of the 9th concession, and that part of the township of Huntingdon south of the 6th concession.

6.—The townships of Madoc, Tudor, Limerick, excepting that part lying north of the 10th concession, and also that part lying west of lot 25 in the different concessions south of the 11th concession of said township, and including all that part of the township of Huntingdon north of the 6th concession of said township, the townships of Elzevir, Grimsthorpe, Cashel, excepting that part of Cashel lying north of the 10th concession of the said township.

7.—The village of Deseronto.

9.—The town of Trenton, and all that part of the township of Sidney which lies to the west of lot No. 7 in each of the concessions of the said township, including Mill Island.

10.—The townships of Marmora, Lake, and all that part of the township of Rawdon which lies to the north of the 8th concession.

12.—The townships of Wollaston, Faraday, Herschel, McClure, Wicklow, Bangor, Carlow, Monteagle, Dungannon, Mayo, and all that part of the township of Cashel lying north of the 10th concession of said township, and all those parts of the township of Limerick lying north of the 10th concession, and west of lot No. 25 in the several concessions of the said township of Limerick.

COUNTY OF HURON.

1.—Comprising that part of the township of Goderich to the north of the Cut Line and the Huron Road until the same meets the road allowance between the 13th and 14th concessions ; then back along the Huron Road to its junction with the Cut Line ; then west by the road allowance between concessions 11 and 12 to the river Maitland ; then along the river Maitland to Goderich, together with the township of Colborne.

2.—Comprising the township of McKillop, the town of Seaforth, and all that portion of the township of Tuckersmith not included in the third division, south of the blind line between the 7th and 8th concessions of the said township of Hullett.

3.—Comprising the township of Hullett ; that part of the township of Goderich not included in Nos. 1 and 7 ; 1st, 2nd, 3rd and 4th concessions township of Stanley ; 1st and 2nd concessions township of Tuckersmith, L.R.S., north of lot 15, and that portion west of side road between lots 25 and 26, H. R. S., and town of Clinton.

4.—Comprising the township of Grey ; all of the township of Morris east of side road between lots Nos. 10 and 11 (which is not included in No. 12) and the village of Brussels.

5.—Comprising the townships of Usborne and Stephen, and the village of Exeter.

6.—Comprising the townships of Ashfield and West Wawanosh, except that portion east of Maitland river.

7.—Comprising the township of Goderich, south of Gut Line and Huron Road, until the same joins the road between the 12th and 14th concessions of the township of Goderich ; thence along the said concessions until the same joins the river Bayfield ; all Stanley not included in No. 3 ; and the village of Bayfield.

8.—Comprising the village of Wingham, the township of Tunberry ; all that part of East Wawanosh not included in No 12, and all the township of Morris, not included in Nos. 4 and 12.

9.—Comprising the township of Howick and the village of Wroxeter.

10.—Comprising the township of Hay.

11.—Comprising the township of Stephen.

12.—Commencing at the north-east angle of the township of Hullett, thence southerly along the easterly boundary of the said township of Hullett to the blind line between the 7th and 8th concessions of said township ; thence westerly along said line to the western boundary of the township ; thence northerly along the westerly boundary of the township to the Maitland river at the south-eastern corner of the Maitland block : thence along the said river northerly till the western boundary of East Wawanosh is reached ; thence northerly along said westerly boundary to the road running between the 6th and 7th concessions of said township of East Wawanosh ; thence easterly along said road to the easterly limit of said township ; thence northerly along the gravel road to the road running between the 5th and 6th concessions of the township of Morris ; thence easterly along said road to the line between lots 10 and 11 ; thence southerly along said line between the 6th and 7th concessions ; thence easterly along said line to the line between lots 15 and 16 ; thence southerly to the boundary line between the townships of Morris and Hullett ; thence easterly to the place of beginning, including the village of Blyth.

COUNTY OF KENT.

1.—The 1st division to consist of the town of Chatham, and that part of the townships of Dover East and West to the south of the 12th and 13th concession line of the township of Dover East ; and that part of the township of Chatham south of the 12th and 13th concession line, and west of the side road between lots 12 and 13, from the first mentioned 12th and 13th concession line to the 5th and 6th concession line, and all south of the said 5th and 6th concession line of said township ; that part of the township of Harwich north of 5th and 6th concession line by the eastern boundary ; that part of the township of Raleigh north of the 16th concession, to the west side road between lots 12 and 13 north, to the 6th and 7th concession line, and all of the said township north of the said last mentioned line, and that part of the township of Tilbury East north of the 4th concession.

2.—The 2nd division to consist of that part of the township of Howard south of the 2nd and 3rd concession line by the eastern boundary (known as the Botany Road) and that part of the township of Orford south of the 10th and 11th concession line of said township.

3.—The 3rd division to consist of all that part of the Gore of Camden lying west of the 10th and 11th concession line, and that part of the township of Camden lying west of the side line between lots 6 and 1 ; the village of Dresden ; and that part of the township of Chatham north of the 5th and 6th concession line and east of the side road between lots 12 and 13.

4.—The 4th division to consist of that part of the township of Harwich south of the 5th concession of the eastern boundary, and south of the 3rd concession by the western boundary, and that part of Raleigh south of the 15th concession and east of the side road between lots 12 and 13, and the road to the lake shore through lot 146 on the Talbot road.

5.—The 5th division to consist of the village of Wallaceburg, the Gore of Chatham, and that part of the township of Chatham north-west of the 12th and 13th concession line and west of the said road between lots 12 and 13, and that part of Dover East lying north of the 12th and 13th concession side road.

6.—The 6th division to consist of that part of the township of Howard, north of the Botany road aforesaid, and of that part of the township of Orford north of the 10th and 11th concession line, the township of Zone, the town of Bothwell, the village of Thamesville, and that part of the Gore of Camden east of the 10th and 11th concession line, and that part of the township of Camden east of the side line between lots 6 and 7.

7.—The 7th division to consist of that part of Tilbury East south of the 3rd concession, the township of Romney, and that part of the township of Raleigh, south of the 6th and 7th concession line and west of the side road between lots 12 and 13 in the said township, and the road through lot 147 on Talbot road.

COUNTY OF LAMETON.

1.—The external boundaries of the township of Sarnia and the town of Sarnia.

2.—The external boundaries of the township of Warwick, including that portion of the village of Arkona south of the township line.

3.—The external boundaries of the townships of Euphemia and Dawn.

4.—The external boundaries of the township of Sombra.

5.—The external boundaries of the township of Plympton.

6.—The external boundaries of the township of Bosanquet, including that portion of the village of Arkona north of the township line.

7.—The external boundaries of the township of Moore.

8.—The external boundaries of the township of Enniskillen.

9.—The external boundaries of the township of Brock.

COUNTY OF LANARK.

1.—The townships of Drummond, Bathurst, South Sherbrooke, Burgess North, and that part of the township of Elmsley North, north of the Rideau river, within the county of Lanark and west of lot No. 12 in each concession.

2.—The townships of Lanark, Dalhousie, Darling, Lavant and North Sherbrooke.

3.—The township of Beckwith, and the first six lots in the first seven concessions of the township of Ramsay.

4.—The township of Montague, and that part of the township of North Elmsley from lot No. 1 to lot No. 12 in each concession, both inclusive.

5.—The township of Pakenham.

6.—The township of Ramsay, with the exception of the first six lots on the first seven concessions of the said township.

UNITED COUNTIES OF LEEDS AND GRENVILLE.

1.—To consist of the 1st, 2nd, 3rd, 4th, 5th, 6th, and 7th concessions and broken front of the township of Elizabethtown, and the concession roads between them.

2.—To consist of the 1st, 2nd, 3rd, 4th and 5th concessions, and broken front, and that part of the 6th, 7th and 8th concessions from the town line of Edwardsburgh, to lot No. 18 ; inclusive of the township of Augusta, and the concession roads between them.

3.—To consist of the 1st, 2nd, 3rd, 4th, and 5th concessions and broken front of the townships of Leeds and Lansdowne, respectively, and the concession roads between them.

4.—To consist of the township of South Gower, the township of Oxford, from the west side line of lot No. 11 in all the concessions of the eastern boundary of the township, and the gore of land between South Gower, Oxford and Edwardsburgh.

5.—To consist of the township of Wolford (except the 7th and 8th concessions and the allowance of road between them), lots Nos. 1 to 10, inclusive, in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th,

and 8th concessions of the township of Oxford, and the allowance of roads within and between them.

6.—To consist of the townships of Bastard and Burgess, and those parts of the townships of Leeds and Lansdowne, on the north side of the rear of the 5th concession in each respectively.

7.—To consist of the townships of Kitley and Elmsley.

8.—To consist of the townships of North Crosby and South Crosby.

9.—To consist of that part of the townships of Escott and Yonge, in rear of the 4th concession of Yonge, and in the rear of the 6th concession of Escott; that part of the township of Elizabethtown, in rear of the 7th concession, and west of lot No. 18 in the 8th, 9th, 10th and 11th concessions, and the allowances for roads embraced therein.

10.—To consist of the township of Edwardsburgh.

11.—To consist of that part of the township of Augusta, in rear of 5th concession and west of lots No. 18, in the 6th, 7th and 8th concessions; the whole of the 9th and 10th concessions of the township of Augusta; the gore between the townships of Oxford, Wolford and Augusta; that part of the township of Elizabethtown in rear of the 7th concession, and east of the commons, between lots Nos. 18 and 19 in the 8th, 9th and 10th concessions; the 7th and 8th concessions of the township of Wolford; lots Nos. 1 to 10, inclusive, in the 9th and 10th concessions of the township of Oxford; and the allowances for roads embraced therein.

12.—To consist of the 1st, 2nd, 3rd and 4th concessions and broken front of the township of Yonge; the 1st, 2nd, 3rd, 4th, 5th and 6th concessions and broken front of the township of Escott, and the allowances for roads embraced therein.

The said 1st, 2nd, 3rd and 12th divisions shall, respectively, embrace and comprehend within their limits those portions of the river St. Lawrence, and islands therein, within the exterior side lines of which such portions of said river and islands would lie and be, if such exterior side lines were produced and extended in that direction to the utmost limits of the province.

COUNTY OF LENNOX AND ADDINGTON.

1.—The town of Napanee ; township of Richmond ; all that part of North Fredericksburg and Adolphustown lying north of Hay Bay ; and all that part of North Fredericksburg lying north of Big Creek.

2.—Comprises 1st concession of Ernestown, the village of Bath, the township of Amherst Island, and the 2nd, 3rd and 4th concessions of the said township of Ernestown, from the west limits thereof to the west limit of lot No. 21, in each concession.

3.—Township of South Fredericksburg and all that part of North Fredericksburg and Adolphustown, not included in division No. 1.

4.—1st, 2nd and 3rd concessions of the township of Camden and the village of Newburg.

5.—All that part of the township of Camden not included in division No. 4.

6.—All that portion of the township of Ernestown not included in the limits of division No. 2.

7.—Townships of Sheffield, Kaladar, Anglesea, Abinger, Effingham, Ashby and Denbigh.

COUNTY OF LINCOLN.

1.—The town and township of Niagara.

2.—The township of Grantham (including the city of St. Catharines, the villages of Merritton and Port Dalhousie), and the township of Louth.

3.—The townships of Caistor and Gainsborough, and the 9th concession of the township of Grimsby, including the 1st and 2nd ranges as part of the said concession.

4.—The villages of Grimsby and Beamsville ; the township of Clinton and the township of Grimsby, except the 9th concession and 1st and 2nd included as part of the said 9th concession.

DISTRICT OF MANITOULIN.

1.—The town of Gore Bay, the townships of Gordon, Allan, Campbell Mills, Burpee, Robinson, Dawson, the islands known as Cockburn, Barrie, Clapperton and the Duck islands, and that part of the township of Billings lying west of the road allowance between lots 15 and 16 in the several concessions thereof, and so much of the township of Carnarvon as lies west of lake Mindemoya and north of the line between the 6th and 7th concessions thereof.

2.—The town of Little Current, the township of Howland, and those parts of the townships of Sheguindah and Bidwell lying north of the line between the 6th and 7th concessions of Sheguindah, and 4th and 5th concessions of the township of Bidwell, and the 6th and 7th concessions of the line between lots 17 and 18 in the township of Billings, and the adjacent islands lying north and east of the said townships, except the Clapperton island.

3.—Manitowaning, the township of Assiginack, Tehkummah and Sandfield, and those parts of the township of Sheguindah lying south of the line between the 6th and 7th concessions of Sheguindah, and 4th and 5th concessions of the township of Bidwell, and the 6th and 7th concessions of the township of Billings to the line between lots 17 and 18 of said township, and the township of Carnarvon, except so much of the same as lies west of Mindemoya Lake, and all that part of Manitoulin lying east of the townships of Assiginack, Manitowaning and South Bays and the islands adjacent thereto.

COUNTY OF MIDDLESEX.

1.—That part of the city of London lying to the west of Maitland street, with that portion of the township of London lying south of the line between the 4th and 5th concessions and west of the said street, produced northerly, or a line in the same direction to the line between the said 4th and 5th concessions, and with that portion of the township of Westminster lying west of the main road leading south from Clarke's bridge across the

Thames : south to the line between the 1st and 2nd concessions ; and westerly to the line between lots 42 and 43, and extending northerly to the river Thames ; and also including the village of London West.

2.—The villages of Parkhill and Ailsa Craig, the townships of East Williams and West Williams, and that portion of the township of Lobo lying north of the line between the 11th and 12th concessions ; and east of the line between lots Nos. 12 and 13.

3.—The townships of McGillivray and Biddulph, and the village of Lucan.

4.—The township of Delaware, with portion of the township of Westminster west of the line between lots 30 and 31, in the 2nd concession ; then southerly on the line between lots 20 and 21, to the southerly limit of the township, including all west of said line, and also including all that portion of the front of said township of Westminster, lying west of the line between lots Nos. 42 and 43, not included in the first division ; with that portion of the township of Caradoc lying south of the line, between the 5th and 6th concessions, to the River Thames ; and with that portion of the township of Lobo, lying south of the line, between the 6th and 7th concessions, to the river Thames.

5.—The townships of Ekfrid and Mosa, including the villages of Wardsville, Newbury and Glencoe.

6.—Townships of Adelaide and Metcalfe ; the town of Strathroy, with that portion of the township of Caradoc lying north of the line, between the 3rd and 4th concessions ; with that portion of the township of Lobo which lies north of the 6th concession, and west of the line between lots 12 and 13 of the said township.

7.—The township of North Dorchester, north and south of the river Thames ; that portion of the township of West Nissouri which lies south of the line between lots 14 and 15 ; and with that portion of the township of Westminster lying south of the line between the 1st and 2nd concessions, and east of the line between lots 30 and 31, in the 2nd concession, and thence east of the line between lots 20 and 21, continued south to the southerly limit of the said township of Westminster.

8.—All that portion of the township of London which lies north of the line between the 4th and 5th concessions ; that portion of the township of Lobo which lies north of the line between the 6th and 7th concessions, and east of the line between lots 12 and 13, to the line between the 11th and 12th concessions, and with all that portion of the township of West Nissouri which lies north of the line between lots Nos. 14 and 15.

9.—That part of the city of London lying east of Maitland street ; that part of the township of London lying south of the line between the 4th and 5th concessions and east of the said street, produced northerly, or in a line in the same direction, to the line between the said 4th and 5th concessions ; and that part of the township of Westminster lying north of the line between the 1st and 2nd concessions, and east of the main road leading south from Clark's Bridge, across the Thames.

DISTRICT OF MUSKOKA.

1.—The village of Bracebridge, and the townships of Macaulay, McLean, Ridout, Monk and Cardwell ; concessions 1, 2, 3, 4, 5, 6, 7, 8 and 9 in the townships of Stephenson, Bruce and Franklin, and that part of the township of Watts, situated east of lot 21, in the several concessions thereof ; and concessions 7, 8, 9, 10, 11, 12 and 13 in the townships of Muskoka and Draper.

2.—The village of Gravenhurst ; the townships of Morrison, Ryder and Oakley, and concessions 1, 2, 3, 4, 5 and 6 of the townships of Muskoka and Draper.

3.—The village of Huntsville ; the townships of Stisted, Chaffey and Sinclair ; and concessions 10, 11, 12, 13 and 14 in the townships of Stephenson, Brunel and Franklin.

4.—The townships of Wood, Medora and Humphrey, and that part of the township of Watt situated west of lot 21 in the several concessions thereof.

DISTRICT OF NIPISSING.

1.—To be composed of the townships of Springer, Field, Badgerow, Caldwell, Kirkpatrick, Hugel, Rattler, Dunnet, Hagar and Appleby, and all that part of the District of Nipissing which is situated west of the line between the Indian Reserve and the township of Widdifield, produced north and south, to the boundary of the said district and the east of the eastern boundary of the 4th division.

2.—To be composed of the townships of Mattawan, Orlig, Calvin, Papineau, Lauder, Pentland, Boyd, Osler, McLaughlin, Canishy, Sabine, Lyell, Airy, Murchison and Robinson, and all that part of the District of Nipissing situated east of the line between the townships of Bonfield and Calvin, produced south to the provisional county of Haliburton, and east of the line between the townships of Phelps and Orlig, produced north to the Ottawa river.

3.—To be composed of the townships of Widdifield, Merrick, Mulock, Phelps, Ferris, Chisholm, Ballantyne, Wilkes, Biggar, Paxton, Butt, Devine, Hunter, McCraney, Finlayson, Peck, and all that part of the District of Nipissing situated west of the line between the townships of Phelps and Orlig, produced north to the Ottawa river and east of the eastern boundary of 1st division.

4.—To be composed of the townships of McKim, Neelon, Dryden, Awrey, Hawley, Blezard, and all that part of the District of Nipissing which is situated west of the line between the said township of Awrey and the township of Hagar, produced north and south to the boundary of the said district.

5.—To be composed of the townships of Bonfield and Boulter.

COUNTY OF NORFOLK.

1.—The gore of the township of Woodhouse, and all that part of said township lying west of the side line between lots 5 and 6, together with that part of the 4th, 5th and 6th concessions lying west of the said line, between lots 12 and 13, including that part of the town of Simcoe within the same.

- 2.—The township of Townsend.
 - 3.—The township of Windham.
 - 4.—The township of Middleton.
 - 5.—The township of Charlotteville.
 - 6.—The township of Walsingham.
 - 7.—The township of Houghton.
 - 8.—All that part of the township of Woodhouse not included in division No. 1, viz.: all that part of the 1st, 2nd and 3rd concessions lying east of the side line, between lots 5 and 6, and that part of the 4th, 5th and 6th concessions lying east of the said line, between lots Nos. 12 and 13 in said township.
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UNITED COUNTIES OF NORTHUMBERLAND AND DURHAM.

- 1.—Townships of Cartwright and Darlington, and the town of Bowmanville.
- 2.—Township of Clarke and village of Newcastle.
- 3.—Township of Hope and town of Port Hope.
- 4.—Townships of Cavan, Manvers, South Monaghan and village of Millbrook.
- 5.—Township of Hamilton and town of Cobourg.
- 6.—Townships of Haldimand and Alnwick.
- 7.—Township of Cramahe and village of Colborne.
- 8.—Township of Brighton and village of Brighton.
- 9.—Township of Percy and village of Hastings.
- 10.—Township of Murray.
- 11.—Township of Seymour and village of Campbellford.

COUNTY OF ONTARIO.

1.—Including the townships of Whitby and East Whitby and the towns of Whitby and Oshawa.

2.—The township of Pickering.

3.—The townships of Reach and Scugog, and the village of Port Perry.

4.—The townships of Uxbridge and Scott, and the town of Uxbridge.

5.—The township of Brock and the village of Cannington.

6.—The township of Thorah, and all that part of the township of Mara lying south of the line, between the 4th and 5th concessions.

7.—All that part of the township of Mara lying north of the line, between the 4th and 5th concessions thereof, and the township of Rama.

COUNTY OF OXFORD.

1.—Comprising the town of Woodstock, the townships of Blanford, East Zorra, East Oxford, and that part of the township of North Oxford, situated east of lot 16, and that part of West Oxford lying east of lot No. 7, to the stage road, thence on the north side of the stage road, to where the said road intersects the township of East Oxford.

2.—Comprises the township of Blenheim.

3.—Comprises the townships of West Zorra and East Nissouri.

4.—Comprises the townships of North Norwich and South Norwich and the village of Norwich.

5.—Comprises all those portions of the townships of North Oxford and West Oxford not comprised in the 1st division; the town of Ingersoll, and those portions of the 1st and 2nd concessions of the township of Durham west of the middle town line.

6.—Comprises the town of Tilsonburg, and all that portion of the township of Durham not included in the 5th division.

DISTRICT OF PARRY SOUND.

1.—The town of Parry Sound, and the townships of Foley, McDougall, Cowper and Carling, and all that portion of the district lying to the west of the east boundary of Carling, produced to the French River.

2.—The townships of McKellar, Croft, Hagerman, Ferguson and all that portion of the district lying between the east boundary of Ferris and the west boundary of Ferguson, produced to the French River.

3.—Townships of Humphrey, Christie, Monteith and Conger.

4.—Townships of McMurrich, Perry and Armour.

5.—The townships of Spence, Chapman, Ryerson, Lount Proudfoot, Bethune and Sinclair.

6.—That territory bounded on the west by the western boundaries of townships of Pringle and Patterson, and the western boundary of the township of Patterson, produced to French river and lake Nipissing; on the east by the eastern boundary of the District of Parry Sound, and on the south by the southern boundaries of the townships of Himsworth, Gurd and Pringle.

7.—The townships of Machar, Laurier, Strong and Joly.

COUNTY OF PEEL.

1.—Town of Brampton, township of Chinguacousy and northern division of township of Toronto Gore.

2.—Village of Streetsville, township of Toronto, and southern division of township of Toronto Gore.

3.—Township of Caledon.

4.—Village of Bolton, township of Albion.

COUNTY OF PERTH.

1.—To consist of all that part of the township of North Easthope west of the line, between lots 25 and 26, and south of the road between the 8th and 9th concessions, and all that part of the township of South Easthope west of the side line, between lots 25 and 26; all that part of the township of Downie and Gore north and east of the concession line, between the 10th and 11th concessions and the Oxford road; and all the township of Ellice from the 1st to the 13th concession, inclusive.

2.—To consist of all that part of the township of Fullarton not included in division No. 3, and the townships of Hibbert and Logan.

3.—To consist of that portion of the township of Downie west of the Oxford road, and south of the concession line between the 10th and 11th concessions: the township of Blanshard; all that part of the township of Fullarton comprising the 13th and 14th concessions, and south of a road leading from the Mitchell road, between lots 24 and 25, east to lot 3 in the 10th concession; thence east along the line between the 10th and 11th concessions to the town line.

4.—To consist of that part of the township of North Easthope east of the line, between lots 25 and 26, and north of the 8th concession, inclusive, with the 9th and 10th concessions; all that part of the township of South Easthope not included in division No. 1.

5.—To consist of the township of Mornington, and all that part of the township of Elma from lots No. 53 to 72, both numbers inclusive, of the 1st concession, and from lots No. 27 to No. 36, both numbers inclusive, in and from the 2nd to the 18th concessions, both concessions inclusive, of the said township of Elma; and concessions 14, 15 and 16 of the township of Ellice; and concessions 11th, 12th, 13th and 14th of the township of North Easthope.

6.—To consist of the township of Wallace, and all that part of the township of Elma from the 1st concession to the 18th concession, both concessions inclusive, and comprising lots Nos. 1 to 52, both inclusive, of the 1st concession, and lots Nos. 1 to 26, inclusive, from the 2nd to the 18th concessions, both inclusive.

COUNTY OF PETERBOROUGH.

1.—Composed of the town of Peterborough, the village of Ashburnham, the townships of North Monaghan and Ennismore, and all that part of the township of Harvey lying west of Pigeon lake and south of Bobcaygeon; and all the township of Smith lying south of the 7th concession; and all the township of Otonabee lying west of the 8th concession and north of lots 21, from the said 8th concession to the western boundary of said township of Otonabee; and all the township of Douro lying south of lots No. 11: and all that part of the township of Dummer lying south of lots numbered 11 and west of the 5th concession.

2.—Composed of the townships of Asphodel, Belmont and Methuen, and that part of the township of Dummer lying east of the 4th concession and south of lots numbered 11.

3.—Composed of all that part of the township of Otonabee lying east of the 9th concession; and all that part of said township of Otonabee lying south of lots numbered 22, and west of the 8th concession.

4.—Composed of all that part of the township of Smith, lying north of the 6th concession; and all that part of the township of Douro, lying north of lots numbered 10; and all that part of the township of Dummer, lying north of lots numbered 10; and also of the village of Lakefield, and of the township of Galway; and all the township of Harvey, except that portion lying west of Pigeon lake, and south of Bobcaygeon.

5.—Composed of the townships of Burleigh, Cavendish, Anstruther and Chandos.

UNITED COUNTIES OF PRESCOTT AND RUSSELL.

1.—Comprises the whole of the township of Longueuil, the municipality of the village of L'Orignal, and the first concession of the township of Caledonia.

2.—Comprises all that part of the township of West Hawkesbury, extending from the front of the 3rd concession, to the rear of the said township.

- 3.—Comprises the whole of the township of East Hawkesbury.
 - 4.—Comprises the township of North Plantagenet, and that part of the township of South Plantagenet, lying north of the Nation river.
 - 5.—Comprises the whole of the township of Cumberland.
 - 6.—Comprises the whole of the township of Russell.
 - 7.—Comprises the two front concessions of the township of West Hawkesbury, and the municipality of Hawkesbury village, within the same.
 - 8.—Comprises the township of Caledonia (excepting the 1st concession of the said township), and also that portion of the township of South Plantagenet lying south and east of the Nation river.
 - 9.—Comprises the whole of the township of Alfred.
 - 10.—Comprises the whole of the township of Clarence.
 - 11.—Comprises the whole of the township of Cambridge.
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COUNTY OF PRINCE EDWARD.

1.—The town of Picton, the 2nd and 3rd concessions "Military Track," from the west line of lot No. 13, eastward; Gore "G"; 1st and 2nd concessions north of the Carrying Place; 1st concession south-east of the Carrying Place, and 2nd concession north of Black river, including Gore "K," and "L" and McCan Gores, all in the township of Hallowell; Block "I," the concessions north and east of East lake, and Gore "B" in the township of Athol, and the 1st and 2nd concessions south of the Bay of Quinte, and Gore "A," in the township of North Marysburg, and 1st concession south-west of Green Point, to the end of Carman's Point in Sophiasburg.

2.—The township of South Marysburg, and the southern part of Athol, commencing at the outlet of East lake, thence down to the head of the lake, thence down to the base line between the 1st concession south and the 1st concession north of East lake,

till it strikes the township line of Hallowell, thence down said township line till it strikes South Marysburg.

3.—The township of Sophiasburg, together with Big[^] island, excepting the 1st concession south-west of Green Point to the end of Carman's Point.

4.—All that part of the township of Ameliaburg lying east of the line between lots 86 and 87, in the 1st, 2nd, 3rd and 4th concessions of said township, including Huff's island.

5.—That part of the township of Hillier not included in the 7th division, also the 1st and 2nd concessions north of West lake, and west of lot No. 7 in the said concession, and that part of Irwin Gore lying north of and west of lot No. 7 in the 2nd concession, and the west part of the 2nd concession produced west of lots No. 74, in that concession, in the township of Hallowell.

6.—Block (IV.) 4, concession south side West lake, 1st concession "Military Tract," 2nd and 3rd concessions of said Tract west of lots No. 13 in those concessions "Gore E," 1st and 2nd concessions north of West lake and east of lot No. 6 in those concessions; the Gerrow Gore, and that part of Irwin Gore not included in Division No. 5, and all that part of the 2nd concession produced east of lot No. 75 in the township of Hallowell.

7.—All that part of the township of Ameliaburg lying west of the line between lots Nos. 86 and 87, in the 1st, 2nd, 3rd and 4th concessions of said township; all that part of the 4th and 5th concessions of the township of Hillier west of the line between lots Nos. 86 and 87, and the 3rd concession west of the line between lots No. 22 and 23, with that part of the 2nd concession lying north of Pleasant Bay, in the said township of Hillier.

8.—All the point lying east of the west line of Marsland's Gore, the concession north of Smith's bay and Waupoos island in the township of North Marysburgh.

DISTRICT OF RAINY RIVER.

1.—That part of the district composed of the territory to the north of the south-easterly shore of the Lake-of-the-Woods, and a line drawn in a north-easterly direction from Rat Portage to the

north end of lake Manitou ; thence in an easterly direction to the south end of the lake known as the lake where the river bends ; thence in an easterly direction to a point where the said meridian of the most easterly part of Hunter's island intersects the Canadian Pacific Railway at the south-west angle of Hawke lake.

2.—The territory lying south and east of the Lake-of-the-Woods, and of the said line.

COUNTY OF RENFREW.

1.—Comprising the town of Pembroke, the townships of Pembroke, Stafford, Alice, Petewawa, Buchanan, Rolph, Wylie, McKay, Fraser, Head, Clara and Maria, and all that part of the township of Wilberforce from the 18th to the 25th concessions, both inclusive ; and also all those parts of the 14th, 15th, 16th and 17th concessions of the same township of Wilberforce lying north of Snake river and east of lake Dore.

2.—Comprising all that part of the township of Westmeath lying east and north of the Muskrat lake and river and all those parts of the township of Ross, from the 5th to the 9th concessions, both inclusive, east of Muskrat lake, and from the 7th to the 13th (of the other) concessions of Ross, both inclusive, of the said township of Ross.

3.—Comprising the village of Renfrew, and the townships of Horton and Admaston, excepting the lots numbered 1 to 22, inclusive, in the 9th, 10th, 11th and 12th concessions and the whole of the concessions numbered 13, 14, 15 and 16 in the said township.

4.—Comprising the village of Arnprior and the township of McNab.

5.—Comprising the townships of Bagot, Blythefield, Brougham, and Matawatchan, and all the lots numbered 1 to 22, inclusive, in the 9th, 10th, 11th and 12th concessions in the said township of Admaston, and the whole of the concessions numbered 13, 14, 15 and 16 in the said townships.

6.—Comprising the townships of Grattan, Sebastopol, South Algoma, North Algoma, and all that part of the township of Wilberforce from the 1st to the 17th concessions, both inclusive, excepting those parts of the 14th, 15th, 16th and 17th concessions of said township of Wilberforce lying north of Snake river and east of lake Dore.

7.—Comprising the township of Bromley, and all that part of the township of Westmeath west of Muskrat lake, and all those parts of the township of Ross from the 1st to the 4th concessions, both inclusive, east of Muskrat lake, and from the 1st to the 6th of the other concessions, both inclusive, of the said township of Ross.

8.—Comprising the townships of Brudenell, Radcliffe, Raglan, Lynedoch, Griffith, Hagarty, Sherwood, Jones, Richards and Burns.

COUNTY OF SIMCOE.

1.—Comprising the town of Barrie, the township of Vespra, except that portion lying west of the Nottawasaga river, and excepting also lots Nos. 38, 39 and 40 in the 1st and 2nd concessions, and lots Nos. 1, 2 and 3 in the 3rd, 4th, 5th, 6th and 7th concessions, respectively. That portion of the township of Oro lying south of lots Nos. 21 in the 1st and 2nd concessions (including the Ranges), and south of lots Nos. 13 in the 3rd, 4th, 5th, 6th, 7th and 8th concessions, respectively; that portion of the township of Innisfil lying east of lots Nos. 5 in the 6th, 7th and 8th concessions, and that portion lying north of the 8th concession; that portion of the township of Essa lying north of lots Nos. 19 in the 7th, 8th, 9th, 10th and 11th concessions.

2.—The village of Bradford; the township of West Gwillimbury, excepting thereout lots Nos. 1, 2, 3, 4 and 5 in the 14th and 15th concessions; the township of Innisfil, except that portion lying north of the 5th concession, and excepting also lots Nos. 1, 2, 3, 4 and 5 in the 1st, 2nd, 3rd, 4th and 5th concessions.

3.—The township of Tecumseth, excepting concessions 12, 13, 14 and 15 ; the township of Adjala, except that portion lying north of lots Nos. 25 in the 8th concession thereof.

4.—The town of Collingwood, the village of Stayner, that portion of the township of Nottawasaga lying north of lots Nos. 18 in the twelve concessions thereof ; that portion of the township of Sunnidale lying north of the 8th concession ; that portion of the township of Flos lying west of the Nottawasaga river ; the islands in lake Huron contiguous to the township of Nottawasaga.

5.—The township of Flos, except that portion lying west of the Nottawasaga river ; the township of Medonte, except that portion lying east of the 10th concession ; and north of lots Nos. 10 in the 9th and 10th concessions, respectively ; that portion of the township of Oro, lying north of the southern boundaries of lots Nos. 21 in the 1st and 2nd concessions, and north of the southern boundaries of lots Nos. 13 in the 3rd, 4th, 5th, 6th, 7th and 8th concessions, respectively ; lots 38, 39 and 40 in the 1st and 2nd concessions, and lots Nos. 1, 2 and 3 in the 3rd, 4th, 5th, 6th and 7th concessions of the township of Vespra.

6.—The town of Orillia, the township of Orillia, southern division, the township of Orillia, northern division, except that portion lying north of lots Nos. 15 in the first seven concessions thereof ; that portion of the township of Oro lying east of the 8th concession ; that portion of the township of Medonte being composed of lots Nos. 1 to 6, both inclusive, in the 11th, 12th, 13th and 14th concessions ; the islands in lake Simcoe contiguous to the townships and portions of townships above described, lying wholly or for the most part opposite thereto.

7.—The township of Nottawasaga, except that portion lying north of lots Nos. 18 in the 12th concession thereof ; the township of Sunnidale, except that portion lying north of the 8th concession ; that portion of the township of Vespra lying west of the Nottawasaga river ; that portion of the township of Essa lying north of lots Nos. 19 in the 1st, 2nd, 3rd, 4th, 5th and 6th concessions ; that portion of the township of Tossorontio lying north of lots Nos. 20 in each of the seven concessions thereof.

8.—The township of Essa, except that portion lying north of lots Nos. 19 in each of the eleven concessions thereof ; the township of Tossorontio, except that portion lying north of lots Nos. 20 in each of the seven concessions thereof ; that portion of the township of Innisfil, being composed of lots Nos. 1, 2, 3, 4 and 5 in the 1st, 2nd, 3rd, 4th, 5th, 6th, 7th and 8th concessions ; the 12th, 13th, 14th and 15th concessions of the township of Tecumseth ; lots Nos. 1, 2, 3, 4 and 5 in the 14th and 15th concessions of the township of West Gwillimbury ; that portion of the township of Adjala lying north of lots Nos. 25 in the eight concessions thereof.

9.—The town of Penetanguishene, and the village of Midland, the township of Tiny ; that portion of the township of Tay lying west of the 8th concession ; the islands in lake Huron contiguous to the township of Tiny, and to that part of the township of Tay, forming part of the ninth division, and lying wholly and for the most part opposite thereto.

10.—The township of Matchedash, that portion of the township of Orillia, northern division, lying north of lots Nos. 15 in the first seven concessions thereof ; that portion of the township of Medonte lying north of lots Nos. 6, in the 11th, 12th, 13th and 14th concessions, and that portion lying north of lots Nos. 10, in the 9th and 10th concessions thereof ; the township of Tay, except that portion lying west of the 8th concession ; the islands in lake Huron, contiguous to that part of the township of Tay, forming part of the 10th division, and lying wholly or for the most part opposite thereto.

NOTE.—Each of the said several divisions shall include all allowances for roads embraced within its external limits, and shall also extend to the centre of every allowance for road lying external and adjacent to every such division, excepting always where such last-mentioned allowance is hereinbefore declared to belong to or form part of any particular division.

UNITED COUNTIES OF STORMONT, DUNDAS AND GLENGARRY.

- 1.—Township of Charlottenburg, in the county of Glengarry.
 - 2.—Township of Lochiel, in the county of Glengarry.
 - 3.—Town and township of Cornwall, in the county of Stormont.
 - 4.—Township of Osnabruck, in the county of Stormont.
 - 5.—Township of Williamsburg, in the county of Dundas.
 - 6.—Township of Matilda, in the county of Dundas.
 - 7.—Township of Mountain, in the county of Dundas.
 - 8.—Township of Finch, in the county of Stormont.
 - 9.—Township of Lancaster, in the county of Glengarry.
 - 10.—Township of Winchester, in the county of Dundas.
 - 11.—Township of Roxborough, in the county of Stormont.
 - 12.—Township of Kenyon, in the county of Glengarry.
-

DISTRICT OF THUNDER BAY.

- 1.—All that part of the District lying west of the meridian of 87 degrees of west longitude, to the meridian of the most easterly part of Hunter's island, excepting therefrom the municipality of Neebing.
- 2.—
- 3.—Comprising the municipality of Neebing.

COUNTY OF VICTORIA.

1.—The first consists of the following townships and parts of townships, viz. : of the 15th concession of the township of Mariposa, and the township of Eldon, except the ranges north and south of Portage road.

2.—The second consists of the following townships : all of the township of Fenelon, except that portion lying east of the Scugog river, and south of Sturgeon lake, and the township of Somerville.

3.—The third consists of the township of Verulam.

4.—The fourth consists of the township of Emily.

5.—The fifth consists of the town of Lindsay, township of Ops, and that portion of the township of Fenelon, lying east of the Scugog river, and south of Sturgeon lake.

6.—The sixth consists of the township of Mariposa, except the 15th concession.

7.—The seventh consists of the townships of Carden and Dalton, Laxton, Digby and Longford, and the township of Bexley, and that portion of the township of Eldon north of Portage road, and the range south of Portage road.

COUNTY OF WATERLOO.

1.—All that portion of the township of Waterloo lying north of block line on the west side of the Grand river, and that part of the upper block of said township, lying on the east side of the Grand river, north of lots Nos. 115, 109, 104, 86 and 95, to the Guelph township line, including the towns of Berlin and Waterloo.

2.—All that part of the township of Waterloo, lying south of the block line on the west of the Grand river, and that part lying on the east side of the Grand river, south of the northern boundary of lots Nos. 115, 109, 104, 86 and 95, to the Guelph township line, including the villages of Preston and Hespeler.

3.—All that part of the township of North Dumfries, lying east of lot No. 19, in the 7th concession; and running a course with the eastern boundary of the said lot in a northerly direction up to the 12th concession; thence along the eastern boundary of lot No. 23, in the said 12th concession, to the township line, including the town of Galt.

4.—The township of Wilmot, including the village of New Hamburg.

5.—The township of Wellesley.

6.—The township of Woolwich.

7.—All that part of the township of North Dumfries, lying west of the eastern boundary of said lot No. 18, in the 7th concession; thence along the eastern limits of said lot No. 19, the same course thereof, in a northerly direction to the 15th concession; thence along the westerly limit of lot No. 23, in the said 12th concession, to the township line, including the village of Ayr.

THE COUNTY OF WELLAND.

1.—Comprising the township of Crowland; that part of the township of Thorold, lying north of the line between lots 178 and 195, running through to Pelham; that part of Pelham, lying south of the 4th concession, and that part of Humberstone, lying north of the concession line, between the 4th and 5th concession, being the whole of the 5th concession and the town of Welland.

2.—Comprising the township of Wainfleet.

3.—Comprising the township of Bertie, and those parts of the township of Humberstone not included in Nos. 1 and 6, and the village of Fort Erie.

4.—Comprising the township of Willoughby, the village of Chippawa, and that part of the township of Stamford, south of the line between lots 136 and 137; easterly from the western limit of the township to the south-east angle of lot No. 133; thence north on the line between lots Nos. 132 and 133, to the northern boundary of the township, including the town of Clifton and Navy Island.

5.—Comprising those parts of the townships of Stamford, Thorold and Pelham, not included in any other division, and the town of Thorold.

6.—Comprising all the township of Humberstone, lying south of the 5th concession, and west of the side lines, between lots Nos. 9 and 10 in the several other concessions thereof, and the village of Port Colborne.

COUNTY OF WELLINGTON.

1.—The town and township of Guelph.

2.—The township of Puslinch.

3.—The township of Eramosa.

4.—Consisting of the township of Nichol, excepting the 11th and 12th concessions; the municipality of Fergus; the first eight concessions of the township of Garafaxa, and lots 1 to 18, both inclusive, in concessions A and B of the township of Peel; lots 13, 14, 15, 16, 17 and 18, in concessions 18 and 19, and lots 19, 20 and 21, in the 17th concession of the township of Peel.

5.—The township of Erin.

6.—Consisting of the township of Pilkington, and the 11th and 12th concessions of the township of Nichol; the municipality of the village of Elora; and lots numbers 19 and upwards belonging to the 9th, 10th, 11th, 12th, 13th, 14th, 15th and 16th concessions of Peel.

7.—Consisting of concessions 1 to 16, inclusive, of the township of Maryboro', and concessions 1 to 16, both inclusive, of the township of Peel, except lots 19, 20, 21, 22 and 23 of those concessions in that township.

8.—Consisting of that part of the township of Arthur, south and south-east of lot 15, on the west side of the Owen Sound road; lot 16 on the Owen Sound road, and lot 12 east of the Owen Sound road, in the township of Arthur; that part of the township of Luther, from lots 1 to 16, both inclusive; and lots 1 to 12, both inclusive, of the 17th and 18th concessions of the township of Peel; lots 5 to 11, both inclusive, of the 19th concession of said township of Peel; and lots 19 to 23, both inclusive, of concessions "A" and "B," of said township of Peel.

9.—The territory formerly comprised in this division is now in the county of Dufferin.

10.—Consists of the township of Minto.

11.—Consists of the town of Mount Forest, and that part of the township of Arthur north of lot 16, west of the Owen Sound road; lot 17, on the Owen Sound road, and lot 13, east of the Owen Sound road.

COUNTY OF WENTWORTH.

1.—All that part of the township of Barton lying east of the line between lots 14 and 15, and all that part of Hamilton city east of Hughson street.

2.—The whole of the township of Flamboro' West.

3.—The whole of the township of Flamboro East.

4.—The whole of the township of Beverley.

- 5.—The whole of the township of Saltfleet.
 - 6.—The whole of the township of Ancaster.
 - 7.—The whole of the township of Glanford.
 - 8.—The whole of the township of Binbrook.
 - 9.—All that part of the township of Barton lying west of the lines between lots 14 and 15, and that part of Hamilton city west of Hughson street.
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COUNTY OF YORK.

- 1.—The city of Toronto, east of Yonge street, at date of 14th September, 1875, (*i.e.*, Bloor, Sherbourne and Howard streets on the north, the Don on the east, down to Queen street, then all south of Queen street as far as Lee avenue.)
- 2.—Concessions 5 to 11, inclusive, of the township of Markham; and concessions 5 to 10, inclusive, of the township of Whitchurch, from 1 to 10, inclusive, together with the villages of Markham and Stouffville.
- 3.—Concessions 1 to 4, inclusive, of the township of Markham; and concessions 1 to 4, inclusive, of the township of Whitchurch, from lot 1 to 10, inclusive; and concession 1 to 4, inclusive, of the township of Vaughan.
- 4.—The township of Whitchurch, from the line between lots 10 and 11, northward, and the township of East Gwillimbury.
- 5.—The townships of Georgina and North Gwillimbury.
- 6.—The township of King and the incorporated village of Aurora.

7.—Concessions 1 to 11, inclusive, of the township of Vaughan.

8.—All that portion of the township of York lying west of Yonge street, and the township of Etobicoke.

9.—Township of Scarboro, and all that portion of the township of York which lies east of Yonge street, and the village of Leslieville.

10.—The city of Toronto west of Yonge street, at date of 14th September, 1875, (*i.e.*, Bloor street on the north and Dufferin street on the west.)

PART II.

REVISED RULES.

As certified by the Board of County Judges, and approved by the President and Judges of the High Court.

WE, the undersigned, Stephen James Jones, David John Hughes, Edmund John Senkler, Herbert Stone McDonald and William Warren Dean, being the Board of County Judges appointed and authorized under the 298th section of *The Division Courts Act* to frame General Rules and Forms concerning the practice and proceedings of the Division Courts in the Province of Ontario, and the execution of the process of such courts; with power also to frame rules and orders in relation to the provisions of the said *Division Courts Act*, and of any future or subsequent Act respecting such courts as to which doubts have arisen, or may arise, or as to which there have been or may be conflicting decisions in any of such courts, have, by virtue of the powers vested in us thereby, and of all other powers enabling us in this behalf, framed the following Rules and Orders, and do hereby certify the same under our hands to the president of the

High Court, to be by him submitted to the judges of the High Court, according to law.

Dated this 26th day of January A.D. 1894.

S. J. JONES,

County Judge, Brant.

D. J. HUGHES,

County Judge, Elgin.

E. J. SENKLER,

County Judge, Lincoln.

H. S. McDONALD,

County Judge, Léeds and Grenville.

W. W. DEAN,

County Judge, Victoria.

*Approval of the President and Judges of the
High Court.*

Approved, 27th January, 1894.

J. A. BOYD, C.

THOMAS GALT, C.J., C P.D.

THOMAS FERGUSON, J.

JOHN E. ROSE, J.

HUGH McMAHON, J.

RULES.

TIME OF OPERATION.

1. The rules of practice and the forms now in use in the several Division Courts shall, on and from the first day of July A.D. 1894, cease to be used, and in lieu thereof, the following shall, on and from such day, be the rules, orders and forms in force and used in said courts. But any action, process, order, judgment, or proceeding, pending, existing or in force in any Division Court at that time, shall not be thereby affected, but shall continue and remain, and so far as necessary, be proceeded with under these rules and forms, if applicable, or otherwise under the rules and forms hitherto in use, or as the judge may direct.

INTERPRETATION.

2. In construing these rules and forms, unless otherwise declared or indicated by the context, the following words shall have the several meanings hereby assigned to them over and above their several ordinary meanings, viz. :—

(1) The word “Act” shall mean The Division Courts Act (Revised Statutes of Ontario, chapter 51) and any amending Act or Acts.

(2) The word “party” shall mean a party to a suit or proceeding, and shall include every person served with notice of, or attending any proceeding, although not named in the summons or particulars of claim.

(3) The word “person” shall include any body corporate or politic, or party, and the heirs, executors, administrators or other legal representatives of such person, to whom the context may apply according to law.

(4) The word "executor" shall be held to embrace and mean "of the last will and testament," and shall extend to a party acting as such of his own wrong, and the word "administrator" shall be held to embrace and mean "of the property of," etc.

(5) Words importing the singular number, or the masculine gender, only, shall include more persons, parties or things of the same kind than one, and females as well as males, and the converse.

(6) The word "oath" shall be construed as meaning a solemn affirmation, or statutory declaration, whenever the context applies to any person and case by whom and in which a solemn affirmation or statutory declaration may be made instead of an oath, and in like cases the word "sworn" shall include the words "affirmed" and "declared."

(7) The words "home court" and "home division" shall mean, respectively, the court and division from which process originally issued.

(8) The words "foreign court" and "foreign division" shall mean, respectively, the court and division into which process is issued from another court.

(9) The words "judge," "clerk" and "bailiff" shall be taken to extend and apply to the junior, deputy, or acting judge, or deputy or acting clerk, or deputy or acting bailiff (as the case may be or may require).

(10) "Plaintiff" shall include every person asking any relief (otherwise than by way of counterclaim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons or otherwise.

(11) "Petitioner" shall include every person making any application to the court or judge, either by petition, motion or summons, otherwise than as against any defendant.

(12) "Defendant" shall include every person served with any writ of summons or process, or served with a notice of, or entitled to attend any proceedings.

(13) The word "county" shall include two or more counties united for judicial purposes, or for purposes to which an enactment relates.

(14) The words "the claim" shall mean the demand, or the subject matter for which any suit or proceeding is brought or instituted in a Division court.

(15) The word "process" shall mean any summons, writ or warrant issued under the seal of the court, or a judge's summons or order.

(16) "Court" means the Division court having jurisdiction in the action, matter or proceeding.

(17) "Clear days" means that in all cases in which any particular number of days is prescribed for the doing of any act, or for any other purpose, the same is to be reckoned exclusive both of the first and of the last day.

(18) "Judgment" means the final decision of the court or judge in any action, or the entering of final judgment by the clerk, when a claim is not disputed, as provided by section 109 of the Act.

(19) "Order" means the final decision of the court or judge in any matter, and also any decision of the court or judge other than final in any action or matter.

(20) "Security covenant" means the covenant required to be furnished by a clerk or bailiff of a Division court, in pursuance of any statute requiring security from any such officer.

(21) "Goods, chattels and property" mean goods, chattels, cattle, sheep or other animals or property, money, money's worth and effects seized or seizable in execution, or upon an attachment, or which may be distrained or made exigible to the satisfaction of a judgment in the Division court.

(22) For the purposes of section 101 of the Act, the word "agent" shall be held to include—

(a) In the case of a railway company, a station-master having charge of a station belonging to the railway company.

(b) In the case of a telegraph company, a person having charge of a telegraph office belonging to the telegraph company, and

- (c) In the case of an express company, a person having charge of an express office belonging to the express company.

(23) Otherwise than as hereinbefore provided for, The Interpretation Act of Ontario, and the interpretation clauses of The Judicature Act shall apply to these rules and forms, unless there be anything on the subject or context repugnant thereto.

- (24) The word "folio" shall mean one hundred words.

CLAIM AND PARTICULARS.

3. Every claim should show the names in full, and the present or last known place of abode of the parties, and must be legible, and delivered to the clerk at his office. But if the plaintiff is not acquainted with the defendant's name, in full, he may describe him by his surname, or by his surname and the initial letters of his Christian name, or by such name as he is generally known by. The defendant shall, in the process, be described as he is in the claim, and such description may be taken to be valid, and all subsequent proceedings may be taken and had in conformity with such description; provided that the judge may, upon application of any party, and upon such terms as he may deem just, make any amendment as to such name or description.

This rule is subject to the provisions of the Act in case of co-partners.

4. The claim shall contain a statement of the particulars thereof, or of the facts constituting the cause of action, and of the sum or sums of money claimed in respect thereof. Such particulars shall be framed in ordinary and concise language. The judge may, on such terms as he may deem just, permit or require such statement to be amended, or further or other particulars to be furnished.

5. In any suit brought under the provisions of the 82nd section of the Act, the claim shall contain a statement (form No. 17) or to the like effect.

6. In actions in a Division court, against officers and their sureties, on the officers' security covenant, the claim shall be as in form No. 18, and the proceedings shall be the same as in ordinary cases.

7. Where the excess is abandoned, it shall be done, in the first instance, and in the claim. Where such has not been done, the judge may, upon such terms as he shall see fit at any time thereafter, but before judgment, permit such abandonment, in which case an entry thereof shall be made in the proceedings.

PROCESS.

8. All first process, with the exception of warrants of attachment issued by justices of the peace, shall be issued under the seal of the court, be signed by the clerk, dated the day on which the claim is entered for suit, and numbered to correspond with the claim on which it issues.

9. The first process issued in a suit under the seal of the court shall, for all purposes, be held to be the commencement of the action.

10. The first process for a recovery of a debt or money demand, or for a tort or other personal action, may be a summons and called "ordinary summons." (Form 49).

11. In actions for the recovery of a debt or money demand, where the particulars of the plaintiff's claim are given with reasonable certainty and detail, the first process may be a summons, form No. 47, which shall be called "special summons."

12. Where an alias or pluries process becomes necessary, it shall be dated on the day on which it actually issued.

13. Where the plaintiff sues under the 229th section of the Act, the proceedings may be by "ordinary summons," or "special summons." At the end of the particulars or in addition to the notices and warnings on the summons, the notices and warning set forth in form No. 52 shall be given.

14. Leave to bring an action under the 83rd section of the Act may be granted by the judge, on production of an affidavit, form No. 23, and in the summons it shall be stated "Issued by leave of the judge."

15. Where there are more defendants than one, and they reside in different counties, concurrent summonses may issue for

the service of the defendants residing out of the county in which the action is brought, but the costs only of the summonses actually served shall be allowed on taxation, unless the judge directs otherwise; and such concurrent summonses shall correspond with the original, and be marked in the margin "Concurrent summons."

SERVICE OF SUMMONS.

16. Every summons shall be returnable on the eleventh day after the day of service thereof upon the defendant, in case the defendant, or one of the defendants, resides in the county in which the action is brought; in case the defendant does not reside, or in case none of the defendants, if there be more than one, reside in the county in which the action is brought, such summons shall be returnable on the sixteenth day after the day of such service.

17. The summons, with a copy of the account, or of the particulars of the claim or demand, attached, shall be served ten days at least before the return day thereof.

18. In case the defendant does not reside, or in case none of the defendants (if there be more than one), reside in the county in which the action is brought, the summons must be served fifteen days at least before the return day thereof.

19. In case of defendants having different or separate, and not joint interests, in an action, the summons must be served on any defendant residing out of the county in which the action is brought, fifteen days, at least, before the return day thereof.

SUBSTITUTIONAL SERVICE.

20. Where it is made to appear to the judge upon affidavit that reasonable efforts have been made to effect personal service of the summons upon the defendant, primary debtor or garnishee, and either that the summons has come to the knowledge of the defendant, primary debtor or garnishee, or that he wilfully evades service of the same, or has absconded, either before or after the issue of summons, or is out of the province of Ontario, but

having in Ontario an office and an agent doing business on his behalf, the judge may, by order, grant leave to the plaintiff to serve the summons, in such manner, at such place, or upon such person, for the defendant, primary debtor or garnishee, as to him may seem proper, and may grant leave to the plaintiff to proceed as if personal service had been effected, subject to such conditions as the judge may impose, and in the same order, the judge may direct that all further notices and orders in the suit up to judgment may be served in the same manner as he has directed substitutional service of the summons.

21. Every summons issued against a corporation, firm or individual, not having its chief place of business within the province, and all subsequent papers and proceedings in the action or proceeding in which the summons has been issued, may be served on the agent of the corporation, firm or individual, whose office or place of business, as such agent, is either within the division in which the summons issued or is nearest thereto.

22. Under the 83rd section of the Act, the leave to be granted for issuing a summons shall be by the judge before whom the action is to be tried under the order, but no leave shall be given to bring a suit in a division other than the one adjacent to the division in which the party to be sued resides, but the division may be in the same or an adjoining county.

FLOODING LANDS IN CERTAIN DISTRICTS.

23. Any action under 52 Vict., cap. 16 (Ontario), for flooding lands, where the sum claimed does not exceed \$20, may be commenced by ordinary summons, and the proceedings thereafter shall be as in any ordinary case.

NOTICE ON WRIT AS TO CHANGE OF VENUE.

24. The notice required by section 98 of the Act shall be endorsed on the summons and be signed by the clerk in the words of form No. 48.

RENEWAL OF WRIT.

25. No original writ of summons shall be in force for more than twelve months from the day of the date thereof, including the day of said date; but if any defendant therein named shall not have been served therewith, the plaintiff may, before the expiration of the twelve months, apply to a judge for leave to serve the writ after, and notwithstanding the lapse of, the said period.

- (a) The judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the service shall be good if made within twenty months from the date of the order, and so from time to time during the currency of the further period allowed.
- (b) The writ shall in such case be renewed, by being marked with the date of the day, month and year of such renewal, to be so marked by the clerk upon delivery to him by the plaintiff, his solicitor or agent, of the judge's order.
- (c) In such case, the original writ shall be available to prevent the operation of any statute whereby the time for the commencement of the action is limited, and for all other purposes, from the date of the original issue of the writ.

AMENDMENTS.

26. In case a special summons is issued, when an ordinary summons should have been issued, or vice versa, the same may be altered or amended by order of the judge, either before or at the hearing, on such terms as the judge may direct.

ABSCONDING DEBTORS.

27. In all cases where an attachment shall issue (whether the suit be commenced by attachment in the first instance or not), unless the defendant shall have been personally served, the hearing or trial shall not take place until a month after the

seizure under the attachment, unless the judge shall otherwise order.

28. When several persons sue out warrants of attachment against an absconding, removing or concealed debtor, each one of such attaching creditors may enter a defence, set-off or counterclaim, and call and examine, and cross-examine witnesses as to any debt or claim proved or attempted to be proved against the debtor, or as to such set-off or counterclaim, in the same way and to the same extent as the debtor himself might do, were he personally to appear and defend the suit, on any ground whatever.

29. Before issuing an attachment against an absconding, removing or concealed debtor, it shall be the duty of the clerk to see that immediately following the statement in the affidavit of the amount due the attaching creditor, the cause and subject of such indebtedness is properly set forth according to form No. 26.

30. In case several judgments have been recovered against an absconding debtor, it shall not be necessary to issue execution upon each such judgment; but one execution against the property seized upon the attachment shall issue for the sale thereof to satisfy the judgments of those creditors, and enough of such property as shall be sufficient to satisfy the said judgments and costs, may be sold thereunder according to law. (Form No. 132a.) Or, if the property has been previously sold as perishable, enough of the proceeds may be applied by the clerk to satisfy such judgments and costs, without execution.

31. The proceeds of such execution, or of the sale of the property, shall, after deducting all costs, remain in the hands of the clerk, and be distributed ratably amongst such creditors as are entitled to share therein, to the extent of their claims, and the surplus, if any, shall be paid to the person entitled thereto.

(a) Where the amount levied by the bailiff, or in the hands of or collected by the clerk, is not sufficient to pay the execution debts, and satisfy the judgments of all the creditors entitled to share in the distribution,

with costs in full, the money shall be applied to the payment, ratably, of such debts and costs of the creditors, after retaining the bailiff's fees, and after payment in full of the costs taxed, and the costs of the execution, to the creditor at whose instance and under whose attachment or execution the seizure and levy were made.

- (b) The clerk shall, before distributing the money, prepare for examination by the debtor and his creditors, a list of the creditors entitled to share in such distribution, with the amount due to each, for principal, interest and costs, the total amount to be distributed and the amount going to each according to such ratable distribution.
- (c) Any party entitled to or interested in any money or debt attached or made, by virtue of an attachment or otherwise, against an absconding debtor, in the hands of the clerk or bailiff, who is not satisfied with the proposed plan of distribution thereof by the clerk, may apply to the judge for an order to correct or change such distribution.
- (d) The clerk shall deliver or send (prepaid and registered), by post, to each creditor, a notice that the said list has been so prepared, and may be examined at his office, at any time within five days from the day of the date of the notice; and that unless within ten days after the day of the date of the notice, objection to such list has been filed with the said clerk, the said list shall be binding upon all parties concerned, unless the judge shall otherwise order.

INTERPLEADER.

32. When any claim shall be made to, or in respect of any goods or chattels, property, or security, taken in execution, or attached under the process of any Division court, or in respect of the proceeds or value thereof, by any landlord, for rent, or by any person, not being the party against whom such process has

issued, and a summons has been issued, on the application of the officer charged with the execution of such process, such summons shall be served, in such time and manner as is directed for service of an ordinary summons to appear.

- (a) If the goods or chattels, property or security were seized or attached while in the possession of the claimant, the case shall proceed as if the attaching creditor were the plaintiff and the claimant were the defendant. In all other cases, it shall proceed as if the claimant were the plaintiff and the execution or attaching creditor were the defendant.

33. The claimant shall, within five days after the day of service of the summons upon him, deliver to the bailiff, or leave at the office of the clerk of the court, a particular of any goods or chattels, property or security, alleged to be the property of the claimant, and the grounds of his claim, set forth in ordinary and concise language; or, in case of a claim of rent, the amount thereof, for what period, in respect to what premises the same is claimed, when due, and terms of holding; and any money paid into court shall be retained by the clerk until the claim shall be adjudicated upon; provided that, by consent of all parties, or without such consent, if the judge shall so direct, an interpleader claim may be tried, although these rules may not have been complied with.

34. In case the claimant shall not have complied with the rule in respect of delivering a particular of his claim, the judge may, upon such terms as he may direct, allow him to deliver the same.

35. Where the claim to any goods or chattels, property or security, taken in execution or attached, or the proceeds or value thereof, shall be dismissed, the costs of the bailiff shall be allowed to him out of the amount levied, unless the judge shall otherwise order.

- (a) Where, under sub-section 3 of section 269 of the Act, the claimant to goods taken under process, claims damages from the creditor or from the bailiff,

for or in respect of the seizure of the property, he shall, in the particulars of his claim to the goods, state the amount he claims for damages and the grounds upon which he claims such damages.

- (b) When a creditor claims damages against a bailiff arising out of the execution of any process, he shall, five clear days before the day upon which the interpleader is to be tried, deliver to the bailiff a notice of such claim, stating the grounds and amount of such claim.
- (c) Where a claim for damages, under sub-section 3 of section 269 of the Act, is made against a bailiff and creditor, or either of them, they, or either of them, may pay into court, money in full satisfaction of such claim for damages, and such payment into court shall be made in the same manner and have the same effect, and the parties respectively shall have the same rights and remedies of defence and counter-claim, as they would respectively have if the proceeding were an action in which the claimant was plaintiff and the bailiff and creditor, defendants.
- (d) Interpleader summonses shall be issued by the clerk, on the application of the bailiff, and shall be served on the claimant and creditor, or upon any solicitor or agent who acts for the claimant or creditor.
- (e) Interpleader summonses shall be issued from the court from which the process issued, or the court holden for the division in which the seizure under the process was made, at the option of this bailiff, and the creditor, and claimant shall be summoned to such court, but subject to the power of the judge in his discretion to change the place of trial.
- (f) In every case in which an execution or attachment has been issued to a bailiff who has seized property as belonging to a judgment or absconding debtor, if the

bailiff finds that there is an incumbrance or lien upon the property, or such a claim made thereto as is provided for in section 269 of the Act, it shall be the duty of the bailiff, forthwith, to notify the party who issued the process, of such incumbrance, lien or claim ; and if the party issuing such process, insists upon the bailiff maintaining such seizure, it shall be incumbent upon him to deposit, with the clerk, a sufficient sum of money to indemnify the clerk and bailiff against their costs of an interpleader ; and in the event of his neglecting or refusing to do so, the bailiff may, in his own discretion, abandon the seizure, and the party who issued the process shall be barred, unless the judge shall otherwise order.

- (g) In case the claimant so desires he may deposit with the bailiff an amount equal to the value of the property seized or attached, or to the amount for which the seizure or attachment has been made, whichever shall be the lesser sum, to be by such bailiff paid into court to abide the decision of the judge upon such claim, and thereupon the bailiff shall re-deliver the property to the claimant. In case of disagreement as to the value of the property seized or attached the matter shall be decided by the clerk or the judge.

36. It shall be lawful for the judge, upon the application of any party to any action or matter pending in the court, to make any order for the sale, by the bailiff or by any person named in such order, and in such manner and on such terms as the judge may think reasonable, of any goods, cattle, property, wares, or merchandise which may be of a perishable nature or which incur charges for food or keeping, or which for any other just and sufficient cause it may be proper to have sold at once.

37. The claimant of goods, chattels, cattle or property referred to in section 269 of the Act, must in making his claim, if he wishes to prevent a sale thereof, deposit with the bailiff either the amount of the value of the goods claimed—(such value to be

fixed by appraisement, in case of dispute)—to be by such bailiff paid into court to abide the final result of the proceedings upon such claim ; or the sum which the bailiff shall be allowed to charge as costs for keeping possession of such goods, chattels, cattle or property until such decision can be obtained, and in default of the claimant so doing, the bailiff shall sell such goods as if no such claim had been made, and shall pay into court the proceeds of such sale, to abide the final decision of the matter.

REPLEVIN.

38. The Division Courts have jurisdiction in all actions of replevin, in case the value of the goods or other property or effects distrained, taken or detained, does not exceed the sum of \$60.00, and in case the title to land is not brought in question.

WHEN GOODS REPLEVIABLE.

39. Whenever any goods, chattels, deeds, bonds, debentures, promissory notes, bills of exchange, books of account, papers, writings, valuable securities, or other personal property or effects have been wrongfully distrained, under circumstances in which by the law of England, on the fifth day of December, one thousand eight hundred and fifty-nine, replevin might have been made, the person complaining of such distress as unlawful may obtain a writ of replevin in the manner prescribed in these rules ; or in case any such goods, chattels, property or effects have been otherwise wrongfully taken or detained, the owner or other person, or corporation capable of maintaining an action of trespass or trover for personal property, may bring an action of replevin for the recovery thereof, and for the recovery of damages sustained by reason of such unlawful caption and detention, or of such unlawful detention, in like manner as actions are brought and maintained by persons complaining of unlawful distresses.

40. No party to an action or proceeding in any Division Court shall replevy, or take out of the custody of the bailiff, or other officer, any personal property seized by him under process against such party.

41. In actions of replevin, no other cause of action shall be joined in the summons.

42. The action may be brought in the Division Court for the division within which the defendant, or one of the defendants resides or carries on business, or where the goods, or other property or effects have been distrained, taken or detained.

43. No writ of replevin shall issue out of any Division Court :

1. Unless an order is granted for the writ on an affidavit by the person claiming the property, or some other person, showing, to the satisfaction of the judge, the facts of the wrongful taking or detention which is complained of, as well as the value and description of the property, and that the person claiming it is the owner thereof, or is lawfully entitled to the possession thereof (as the case may be).

2. Or unless the person claiming the property, his servant or agent, makes an affidavit, which shall be entitled and filed in the court out of which the writ is to issue, stating :

(a) That the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof (describing the property in the affidavit);

(b) The value thereof, to the best of his belief ;

(c) That the property was wrongfully taken out of the possession of the claimant, or was fraudulently got out of his possession, within two calendar months next before the making of the affidavit ;

(d) That the deponent is advised and believes that the claimant is entitled to an order for the writ ;

(e) And that there is good reason to apprehend that unless the writ is issued without waiting for an order, the delay would materially prejudice the just rights of the claimant in respect to the property.

3. Or (in case the property was distrained for rent or damage feasant), unless the person claiming the property, his servant or agent, makes an affidavit (which shall be entitled and filed in the court from which the writ is to issue), stating :

- (a) That the person claiming the property is the owner thereof, or that he is lawfully entitled to the possession thereof (describing the property in the affidavit);
- (b) The value thereof, to the best of his belief ;
- (c) That the property was taken under colour of a distress for rent or damage feasant, and in such case the writ shall state that the defendant has taken and unjustly detains the property, under colour of a distress for rent, or damage feasant (as the case may be).

44. Where an application for an order is made, the judge may proceed on the ex parte application of the plaintiff, or may direct notice to be served on the defendant to show cause why the writ should not issue, and may, on the ex parte application or on the return of the motion to show cause, grant or refuse the writ, or direct the bailiff to take a bond in less or more than treble the value of the property, or may direct him to take and detain the property until the further order of the judge, instead of at once replevying the same to the plaintiff; or may impose any terms or conditions in granting the writ, or in refusing the same, as under the circumstances in evidence appears just.

45. In actions of replevin, the first process shall be a writ of replevin and summons, called "summons in replevin" (Form No. 64). The description and value of the property shall be stated in the writ.

46. On entering a claim in replevin, the plaintiff must specify and describe, in a statement of particulars, the cattle or the several goods, chattels or other property, or effects distrained, taken or detained, and the distress or other taking or detention of which he complains.

47. Before the bailiff acts on the writ, he shall take a bond with sufficient sureties in treble the value of the property to be replevied, as stated in the writ. The bond shall be assignable to the defendant; and the bond and assignment thereof may be in the words or to the effect in the forms Nos. 65 and 66, the condition being varied to correspond with the writ.

48. The bond shall be subject to the provisions of section 8, chapter 11, of the Act passed by the Imperial Parliament in the eighth and ninth years of the reign of His Majesty King William the Third.

49. Where a writ of replevin is sued out for personal property which has not been previously taken out of the plaintiff's possession, and for which the plaintiff might have brought an action of trespass or trover, the defendant shall be entitled, if the plaintiff fails in the action, to be fully indemnified against all damages sustained by the defendant, including any extra costs which he may incur in defending the action; and the bond to be taken by the bailiff shall be conditioned not only as heretofore required in that behalf, but also to indemnify and save harmless the defendant from all loss and damage which he may sustain by reason of the seizure, and of any deterioration of the property in the meantime, in the event of its being returned, and all costs, charges and expenses which the defendant may incur. This rule shall not apply to cases of distress for rent or damage feasant.

50. In case the writ issues without an order, the bailiff shall take and detain the property and shall not replevy the same to the plaintiff without the order of the judge in that behalf, but may, within fourteen days from the time of his taking the same, re-deliver it to the defendant, unless in the meantime the plaintiff obtains and serves on the bailiff an order directing a different disposition of the property; but this rule shall not apply in case of a distress for rent or damage feasant under Rule No. 43, sub-rule 3

51. In case the property to be replevied, or any part thereof, is secured or concealed in any dwelling house or other building or enclosure of the defendant, or of any other person holding the same for him, and in case the bailiff publicly demands from the owner and occupant of the premises deliverance of the property to be replevied, and in case the same is not delivered to him within twenty-four hours after such demand, he may, and if necessary, shall break open such house, building or enclosure for the purpose of replevying such property or any part thereof, and shall make replevin according to the writ aforesaid.

52. If the property to be replevied, or any part thereof, is concealed either about the person or on the premises of the defendant, or of any other person holding the same for him, and in case the bailiff demands from the defendant or such other person deliverance thereof, and deliverance is neglected or refused, he may, and if necessary shall, search and examine the person and premises of the defendant, or of such other person, for the purpose of replevying such property or any part thereof, and shall make replevin according to the writ.

53. The bailiff shall return the writ at or before the return day thereof, and shall transmit, annexed thereto:—

- (a) The names of the sureties in, and the date of the bond taken from the plaintiff, and the name or names of the witnesses thereto.
- (b) The place of residence and additions of the sureties.
- (c) The number, quality and quantity of the articles of property replevied; and in case he has replevied only a portion of the property mentioned in the writ, and cannot replevy the residue by reason of the same having been removed or carried (eloigned) out of the county by the defendant, or not being in the possession of the defendant, or of any other person for him, he shall state in his return the articles which he cannot replevy, and the reason why not.

54. If the bailiff makes such a return of the property distrained, taken or detained having been eloigned, then upon the filing of such return, a writ in withernam shall be issued by the clerk who issued the summons in replevin; and before executing such writ the bailiff shall take security, as provided by Rule No. 47.

55. A copy of the writ shall be served on the defendant personally, or, if he cannot be found, by leaving the copy at his usual or last place of abode, with his wife or some other grown person, being a member of his household, or an inmate of the said place of abode.

56. The copy of the writ shall not be served upon the defendant until the bailiff has replevied the property, or some part of it, if he cannot replevy the whole, in consequence of the defendant having removed or carried (eloigned) the same out of the county in which he is bailiff, or because the same is not in the possession of the defendant, or of any other person for him.

57. In case it is shown by affidavit to the satisfaction of the judge, that service of the writ cannot be made upon the defendant in any of the modes authorised by the preceding rules, such judge may grant leave to the plaintiff to serve the writ and statement of particulars in such manner, at such place, or upon such person for the defendant, as to him may seem proper, and may grant leave to the plaintiff to proceed, as if personal service had been effected, subject to such conditions as the judge may impose.

58. In case a writ of replevin is issued, or in case an order is made therefor, the defendant may at any time, or from time to time, on notice to the plaintiff, apply to the judge on affidavit or otherwise, to discharge, vary or modify the writ or order, or to stay proceedings under the writ, or for any other relief, to be specified in the notice, with respect to the return, safety or sale of the property or any part thereof, or otherwise; and the judge may make such order thereon as, under all the circumstances best consists with justice between the parties.

59. In case the defendant has been duly served with a copy of the writ and statement of particulars, then, unless the defendant has left with the clerk within eight days after the day of service (where the service is required to be ten days before the return), or within twelve days after the day of service (where the service is required to be fifteen days before the return), a notice in writing that he intends to dispute the claim of the plaintiff, it will be considered that he has no defence, and the plaintiff may proceed in the action in the same manner as if the defendant had appeared and had admitted the plaintiff's right to the possession of the goods, and final judgment may be entered as if by default. But the judge may, on sufficient grounds shewn, and on such terms as to costs and otherwise as he thinks just, let the defendant in to defend.

60. In case the plaintiff becomes entitled to sign judgment by default, he shall be at liberty to sign final judgment for the sum of two dollars and costs, according to the proper scale, but shall not be entitled to recover a larger sum, except upon an assessment before a judge or jury, or upon filing the written consent of the defendant or his solicitor, and an affidavit verifying the signature of such consent.

61. The defendant may at any time, not less than six days before the day appointed for the trial, pay into court such sum as he thinks a full satisfaction for the plaintiff's demand, together with the plaintiff's costs up to the time of such payment.

62. In case the defendant in an action of replevin shall pay money and costs into court, and shall leave with the clerk a consent in writing that the replevin bond be delivered up to be cancelled and an express waiver of all right to the property replevied, and the plaintiff accepts such money, the proceedings in the said action of replevin shall thenceforth cease and be discontinued.

63. It shall not be necessary to have formal pleadings in replevin actions.

64. Either party may require a jury in an action of replevin, where the value of the goods sought to be recovered exceeds \$20.

65. Where the distress is for rent, or for any other claim for which a distress may be lawfully taken, and the defendant succeeds in the action, if the defendant shall so require, the judge shall, if the action has been tried without a jury, and the jury shall, if the action is tried with a jury, find the value of the goods distrained, and if the value be less than the amount of rent or otherwise of money in arrear, judgment shall be given for the amount of such value; but if the amount of the rent, or such other sum of money in arrear, be less than the value so found, judgment shall be given for the amount of such rent, or other sum of money, and may be enforced in the same manner as any other judgment of the court.

66. Where the distress is for damage feasant and the defendant is entitled to judgment for a return, if the plaintiff shall so require, the judge shall, if the action is tried without a jury, and the jury shall, if the action is tried with a jury, find the amount of the damage sustained by the defendant, and judgment shall then be given in favor of the defendant, in the alternative for a return, or for the amount of the damage so found.

67. In all cases of replevin, other than those arising out of a seizure by way of distress, where the defendant justifies the taking and proves his case, the judgment for the defendant shall be for a return of the goods, with or without costs, together with such damages as the defendant shall have sustained, if damages are awarded.

GARNISHEE PROCEEDINGS.

68. The application, under the 178th section of the Act, may be made to the judge, ex parte, and upon affidavit of the primary creditor, his solicitor, or some other person or persons aware of the facts, respectively, stating that judgment has been recovered, and when, and that it is still unsatisfied, in whole or in part, and to what amount, and that the deponent has reason to believe, and does believe that some one or more parties (naming them, or stating that he is unable to name them), is or are within this province, and is or are indebted to the primary debtor, and stating the nature of the debt sought to be attached, and the amount thereof, if known to the deponent, or that, after careful enquiry, he has been unable to ascertain the amount thereof.

69. Any person, other than the primary creditor, primary debtor or the garnishee, who wishes to avail himself of the benefit of the first sub-section of section 188 of the Act, may apply to the judge for directions how to proceed. Upon such application, the judge may, upon such terms as he shall think just, add any one or more persons as a party or parties to the action, either as a primary creditor or intervener, or otherwise as he may determine, and may dispose of all matters in dispute, and make such order or orders as to costs as he might have done if such person or persons had originally been parties to the action.

70. In an action against a primary debtor and a garnishee, in case the primary creditor fails to prove his claim, or is non-suited, or judgment is rendered against him, in favor of the primary debtor, and there is a controversy between the primary debtor and the garnishee, which they both desire to have disposed of, the case shall proceed to its termination as between them, in the same way as if the primary debtor were the plaintiff in an ordinary action, and the garnishee were the defendant, and all the consequences shall follow thereafter, whatever be the state of the cause, as would ordinarily follow, and the same remedies and judgment shall be afforded and rendered in all respects as between them as there would supposing the primary creditor had not been a party to the proceedings.

71. Where an exemption from liability to garnishment is claimed, under the 174th and 175th sections of the Act, it shall be necessary for the primary debtor to establish the fact of such exemption.

72. The warning (Form 73a), shall be endorsed on or subjoined to the attaching order issued under section 178 and on the summons referred to in section 181 and section 185, sub-section 1.

73. In case a debt sought to be garnished is for wages or salary, the memorandum required by section 177, shewing the residence of the primary debtor and the nature of his occupation in the service of the garnishee, if he is then in such service, and whether the debt alleged or adjudged to be due was or was not incurred for board or lodging, shall be set forth in the statement of the plaintiff's claim, and copies thereof furnished to the clerk, and endorsed upon or annexed to the summons, as required by the said section 177.

74. The service of the summons on the garnishee shall in all cases be made at least ten days before the return thereof, and the service on the primary debtor or debtors, ten or fifteen days (according to the places of residence of the parties to be served), before the return thereof. If the amount of the primary creditor's claim exceeds fifteen dollars, the service shall be personal, unless the judge order otherwise; if such claim does

not exceed fifteen dollars, the service may be personal, or on his wife or servant or some grown person being an inmate of the dwelling house or usual place of abode, trading or dealing of the person requiring to be served.

75. The primary debtor shall in all cases, unless service is dispensed with by the judge, be served with the garnishee summons, and if not served, the judge, unless he dispenses with service, may, on such terms as to him may seem meet, adjourn the case until such service is effected.

76. The judge, in any garnishee proceeding, may order that the service need not be personal, but may be made on any person or persons to be named in the order, or in such other manner as the judge may direct.

77. Whenever in a proceeding to obtain an attachment of debts, it is claimed that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the judge may order such third person to appear and to state the nature and particulars of his claim upon such debt, and after hearing the allegations of such third person, and of any other person who by the same or any subsequent order, is ordered to appear or in case of such third person not appearing when ordered, the judge may give such decision between all the parties as he shall consider just, and may bar the claim of such third person, either in whole or in part, or make such other order, as such judge shall think fit, upon such terms in all cases, with respect to the lien or charge, (if any) of such third person, and to costs, as the judge shall think just and reasonable.

78 Where the summons, under section 181, is to be issued from any court other than that in which the primary creditor has obtained judgment against the primary debtor, a transcript of such judgment shall be filed with the clerk of such first mentioned court, previous to the issuing of the summons against the garnishee.

79. No payment made by a garnishee to a primary creditor before judgment given against the primary debtor, shall discharge him from his liability, unless an order for such payment has been first obtained from the judge.

- (a) Where a garnishee pays money into court, and the primary creditor does not accept in satisfaction of the amount sought to be attached, the sum so paid into court, the money shall not be paid out until after the judgment, and any costs which shall have been awarded to the garnishee shall be deducted therefrom and paid to the garnishee.

80. Where the garnishee shall pay into court, five clear days before the day appointed for the trial, the amount due from him to the judgment debtor, or an amount equal to the claim of the primary creditor, including costs, he shall not be personally liable for any costs incurred by the primary creditor.

- (a) The clerk shall forthwith give notice of the payment into court to the primary creditor, and if he elects to accept the money so paid into court by the garnishee, and shall send to the clerk and to the garnishee by post, or leave with the clerk a written notice stating such acceptance, within forty-eight hours after receipt of the notice of payment into court, no further proceedings against the garnishee shall be taken in the said suit, and in the event of judgment being given therein in favor of the primary creditor against the primary debtor, the money so paid into court shall, by order of the judge, be applied upon such judgment. In case the primary creditor had already obtained judgment against the primary debtor, the said money shall, by order of the judge, be applied upon the same.

- (b) Upon the return day, should the amount paid into court be not accepted, the judge shall determine as to the liability of the garnishee to pay any further sum on account of the debt claimed to be due from him to the primary debtor, and as to the party by whom the costs of the action, or any part thereof, shall be paid, and make such order as may be in accordance with such determination.

- (c) If the primary creditor shall not send or deliver notice to the clerk of his acceptance of the money paid into court, as hereinbefore provided, it shall be considered that he elects not to accept the same, but to proceed for a further sum, and the action shall proceed accordingly.

81. The application under section 195 shall not be made ex parte, but must be made upon written notice of motion, or by summons obtained from the judge, returnable at any time and place the judge may appoint, and calling upon the garnishee, primary creditor, or such other person or persons as the judge in his discretion shall think fit. If the money has been paid over, the primary creditor or other person may be called upon by the notice of motion or summons, to show cause why he should not pay the money to the primary debtor or other person applying.

82. The bond to be given under section 196 shall be executed by the primary creditor, or his agent, with one or more sufficient sureties and shall be in double the amount of the debt ordered to be paid by the garnishee, and shall be an ordinary bond to the clerk, by his name of office, conditioned for the repayment of the money, in case repayment be ordered, and such bond shall be approved of by the clerk.

83. The bond given to the clerk under section 196, may, by order of the judge, be assigned by the clerk to a garnishee, upon its being shown that the condition has been broken, by non-compliance with an order for the repayment into court of moneys paid in by a garnishee.

84. If the primary creditor is obliged to issue execution against the garnishee, the costs of such execution and the bailiff's fees thereon shall be levied of the garnishee.

85. When the attaching order or garnishee summons issues, the clerk shall forthwith make an entry thereof in the debt attachment book, and so from time to time shall make an entry of each subsequent proceeding so soon as taken.

DEFENCES IN GARNISHEE PROCEEDINGS.

86. In cases under the Act, and whether the claim of the primary creditor is or is not a judgment, the primary debtor, the garnishee and all other parties in any way interested in, or to be affected by the proceedings, shall be entitled to set up any defence, as between the primary creditor and the primary debtor, which the latter would be entitled to set up in an ordinary action, and also any such defence as between the garnishee and the primary debtor, and may also show any other just cause why the debt sought to be garnished should not be paid over or applied in or towards the satisfaction of the claim of the primary creditor.

- (a) A primary debtor or garnishee who desires to set up a statutory or other defence, or set-off, or to admit his liability, in whole or in part, for the amount claimed in such action, shall file with the clerk the particulars of such defence, or set-off, or an admission of the amount due or owing by the primary debtor, or the garnishee, as the case may be, within eight days after service on him of the summons.
- (b) The clerk shall forthwith send by mail to each of the said parties to the action a copy of such defence, set-off or admission.
- (c) The primary creditor may file with the clerk a notice that he admits the defence, or set-off, or accepts the admission of liability as correct.
- (d) A copy of the notice shall be sent by the clerk, by mail, forthwith to the garnishee.
- (e) In the absence of any notice of defence, or set-off, from any primary debtor or garnishee, the judge may, in his discretion, give judgment against such primary debtor or garnishee, subject to the provisions of sub-section (a) of this rule.
- (f) In the event of the primary creditor failing to file a notice admitting or rejecting such defence, set-off or

admission of liability, the garnishee shall not be bound to attend the trial, and the sum admitted to be due or owing by the garnishee shall be taken to be the correct amount of his liability, unless the judge shall otherwise order, in which latter case, the garnishee shall be notified by the clerk, and shall have an opportunity of attending at a subsequent date, and of being heard before judgment is given against him.

(g) The costs of all notices required to be given under section 188 of the Act shall be costs in the cause, and in no case shall be payable by the garnishee, unless specially ordered by the judge.

(h) If the garnishee or the primary debtor, having been duly served with summons, does not appear on the return of such summons, the judge may proceed to hear the case and may give judgment against him in his absence, but except where an admission of liability has been filed as in the preceding part of this rule is provided, no judgment shall be given against any garnishee or primary debtor, either for want of notice of defence, or for default of appearance, without sufficient proof of the debt or amount due or owing by him, as required by section 187 of the Act.

(See *In re Johnson v. Therien*, 12 P. R., 442).

(i) If only some of the parties required to be served, are served, the judge may give the same judgment against those served as in ordinary cases.

87. In the proceedings against garnishees under the consolidated rules of practice of The Supreme Court of Judicature for Ontario, rules 940 to 943 inclusive, the forms 173b and 152 may be used; and the same proceedings may be taken in the Division court against the garnishee as provided in the Division Courts Act and in these rules and forms, so far as applicable.

88. In cases of attachment issued in garnishee proceedings, under the consolidated rules of practice of the supreme court of judicature and coming within the jurisdiction of the Division courts; the clerk of the Division court shall enter all the proceedings (commencing with the order received by him) in the procedure book.

PROCEEDINGS BY AND AGAINST EXECUTORS AND ADMINISTRATORS.

89. A party suing an executor or administrator, may charge in the summons (Form 50) that the defendant has had assets, and has wasted them, and he shall state in his particulars the amount of assets alleged to have been left by the deceased, and the manner in which the said assets have been wasted.

90. In all cases where the defendant is charged with waste in the summons, if the judge shall be of opinion that the defendant has wasted the assets, the judgment shall be, that the debt, or damages and costs, shall be levied of the goods of the testator (if any) and if not, of the goods of the defendant, to an amount not exceeding the amount so wasted; and the non payment of the amount of the demand immediately, and the court finding such demand to be correct, and that the defendant is chargeable in respect of assets, shall be conclusive evidence of wasting to the amount with which he is so chargeable.

91. Where an executor or administrator denies his representative character, or alleges a release to himself of the demand, whether he insists on any other ground of defence or not, and the judgment of the court is in favor of the plaintiff, it shall be, that the amount found to be due, and costs, shall be levied of the goods of the testator, if any, and if not, as to costs, of the goods of the defendant.

92. Where an executor or administrator admits his representative character, and only denies the demand, if the plaintiff prove it, the judgment shall be, that the demand and costs shall be levied of the goods of the testator, if any, and if not, as to costs, of the goods of the defendant, unless the judge otherwise orders.

93. Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, and the defendant proves the administration alleged, the judgment shall be, to levy the costs of proving the demand of the goods of the testator, if any, and if not, of the goods of the defendant, unless the judge otherwise orders; and as to the whole or residue of the demand, judgment of assets when they shall have come into his hands; and the plaintiff shall pay the defendant's costs of proving the administration of assets.

94. Where the defendant admits his representative character, but denies the demand, and alleges a total or partial administration of assets, and the plaintiff proves his demand, but the defendant does not prove the administration alleged, the judgment shall be, to levy the amount of the demand, if such amount of assets is shown to have come to the hands of the defendant, or such amount as is shown to have come to them and costs, of the goods of the testator, if any, and if not, as to costs, of the goods of the defendant; and as to the residue of the demand, if any, judgment of assets when they shall have come into his hands.

95. Where the defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, and proves the administration alleged, the judgment shall, in case of total administration, be for assets when they shall have come into his hands, and in case of partial administration, for such amount as is shown to be in his hands, of the goods of the testator, and as to the residue of the demand, of such goods when they shall have come into his hands, and the plaintiff shall pay the defendant's costs of proving the administration of assets, unless the judge shall otherwise order.

96. Where a defendant admits his representative character and the plaintiff's demand, but alleges a total or partial administration of the assets, but does not prove the administration alleged, and has not established any other ground of defence, the judgment shall be, to levy the amount of the demand, if so much assets is shown to have come to the defendant's hands, or so much as is shown to have come to them, and costs, of the goods of the

testator, if any, and if not, as to costs, of the goods of the defendant; and as to the residue of the demand, if any, judgment of assets when they shall have come into his hands.

97. Where judgment has been given against an executor or administrator, that the amount be levied upon assets of the deceased, when they shall have come into his hands, the plaintiff or his personal representative, may issue a summons (form No. 53), and if it shall appear that assets have come to the hands of the executor or administrator since the judgment, the judge may order that the debt, damages and costs be levied of the goods of the testator, if any, and if not, as to the costs, of the goods of the defendant, provided that it shall be competent for the party applying, to charge in the summons that the executor or administrator has wasted the assets of the testator or intestate, in the same manner as in Rule 89, and the provisions of Rule 90, shall apply to such inquiry; and the judge may, if it appears that the party charged has wasted the assets, direct a levy to be made, as to the debt and costs of the goods of the testator, if any, and if not, of the goods of the defendant.

98. Where a defendant admits his representative character and the plaintiff's demand, and that he is chargeable with any sum in respect of assets, he shall pay such sum into court, subject to the rules relating to payment into court, in other cases.

99. In actions against executors and administrators, for which provision is not hereinbefore specially made, if the defendant fails as to any of his defences, the judgment shall be for the plaintiff, as to his costs of disproving such defence, and such costs shall be levied of the goods of the testator, if any, and if not, of the goods of the defendant, unless the judge otherwise orders.

- (a) In case an executor or administrator pleads his notice to creditors and distribution of assets, he must give notice of such defence, and that there has been a proper audit of the accounts of his administration.

100. In actions by executors or administrators, if the plaintiff fail, the costs shall, unless the judge shall otherwise order, be awarded in favor of the defendant, and shall be levied of such goods as the judge shall direct.

- (a) If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, it shall be stated in the particulars of claim in what capacity the plaintiff sues or the defendant is sued.
- (b) Trustees, executors or administrators may sue and be sued on behalf of, or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the judge may, at any stage of the proceedings, order any such persons to be made parties to the action, either in addition to, or in lieu of, the previously existing parties thereto.
- (c) Claims by or against an executor or administrator, as such, may be joined with claims by or against him personally, provided the last mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

DEFENCES AND CONFESSIONS.

101. In any case where no dispute is entered as to a portion of a claim sued in a Division court, or where a portion of the claim is admitted by the defendant, the plaintiff may, at his option, proceed to judgment and execution of such portion without prejudice to his right to recover for the remainder of the claim.

- (a) Where the defendant's notice of defence disputes the claim in part only, or admits a portion of the claim, the clerk shall forthwith notify the plaintiff thereof in the manner provided by Rule 162, and require him forthwith to state in writing whether he is willing to take judgment for the portion so admitted, or as to which no dispute is made, and unless the plaintiff, within 48 hours after the receipt of such notice, notifies the clerk in writing that he is content to take

judgment for such portion, it will be assumed that he intends to proceed for the remainder of the claim, and the case will be entered for trial accordingly. (See post Rule 166.)

CONFESSION BEFORE ACTION.

102. Every confession or acknowledgment of debt, taken before suit commenced, must show therein, or by statement thereto attached at the time of the taking thereof, the particulars of the claim for which it is given, with the same fulness and certainty as would be required in proceedings by "special summons;" and unless application for judgment on such confession be made to the judge within three calendar months next after the same is taken, or at the sittings of the court next after the expiration of such period, no execution shall be issued on the judgment to be rendered, without an affidavit by the plaintiff, or his agent, that the sum confessed, or some and what part thereof, remains justly due; and applications for judgment shall be made at a sitting of the court for the division wherein the confession was taken, or to the judge, elsewhere.

NOTICE OF ADMISSION OF PART.

103. With a view to save unnecessary expense in proof, the defendant or plaintiff shall be at liberty to give the opposite party a notice (Form 19) in writing, that he will admit, on the trial of the cause, any part of the claim, counterclaim, or set off, or any facts which would otherwise require proof; and after such notice given, the plaintiff or defendant shall not be allowed any expense subsequently incurred for the purpose of such proof: the notice shall be served on the plaintiff or defendant, or left at his usual place of abode, or, if he be not resident within the division, be left with the clerk of the court for him, at least five days before the day appointed for the trial or hearing.

104. A defendant giving notice of set-off or other statutory defence, or paying money into court, or pleading a tender or counterclaim, shall be deemed to have sufficiently given the clerk notice of disputing the plaintiff's claim within the meaning of the 109th section of the Act.

COUNTERCLAIM.

105. A defendant in an action may set up by way of counterclaim, against the claim of the plaintiff, any right or claim, whether the same found in damages or not.

106. A counterclaim, not involving matter beyond the jurisdiction of the court, shall have the same effect as a statement of claim in a cross-action, so as to enable the court to pronounce a final judgment in the same action, both on the original and on the cross-claim.

107. Where a defendant sets up a counterclaim, if the plaintiff or any other person named as a party to such counterclaim, contends that the claim thereby raised, ought not to be disposed of by way of counterclaim, but in an independent action, he may, at any time before or at the sittings, apply to the judge for an order that such counterclaim may be excluded; and the judge may, on the hearing of such application, make such order as shall be just.

108. In any case of counterclaim, or where any incidental claim arises at the trial, if the judge thinks that such claim can be better disposed of by an independent action, he may order such claim to be excluded, whether any application for that purpose be made to him or not.

109. Where, in any action, a set-off or counterclaim is established against the plaintiff's claim, the judge may, if the balance is in favor of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case, as provided by sections 74 and 130 of the Act.

110. Where in any action a counterclaim is made, it shall be a matter of discretion for the judge whether the judgment shall be entered for so much for the plaintiff on the claim, and for so much for the defendant on the counterclaim, or whether it shall be entered for the balance.

111. If, in any case in which the defendant sets up a counterclaim or set-off, the action of the plaintiff is stayed, discontinued

or dismissed, the counterclaim or set off may, nevertheless, be proceeded with.

112. Where an action is brought, or a defendant in his statement of defence seeks by way of counterclaim, to recover specific property, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the judge, upon being satisfied by affidavit or otherwise of the existence of such lien or security, may order that the party seeking to recover the property be at liberty to pay into court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such judge may direct, and that upon such payment into court being made, the property be given up to the party seeking to recover it.

JUDGMENT ON COUNTERCLAIM, WHERE PLAINTIFF DOES NOT APPEAR.

113. If, when a trial is called on, the plaintiff does not appear, and the defendant has given notice of a counterclaim, not involving matter beyond the jurisdiction of the court, he may prove such counterclaim, so far as the burden of proof lies upon him, and have judgment accordingly; provided that any judgment obtained under this rule may be set aside, upon the application of the plaintiff, in like manner as a judgment obtained under sections 109 or 117 of the Act.

RULE IN CASES OF DEFENCE OR COUNTERCLAIM IN EXCESS OF JURISDICTION.

114. Where, in any proceeding before a Division court, any defence or counterclaim of the defendant involves matter beyond the jurisdiction of the court, such defence or counterclaim shall not affect the competence or the duty of the court to dispose of the whole matter in controversy, so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the court has jurisdiction to administer shall be given to the defendant upon any such counterclaim.

115. In case the defendant desires to avail himself of the law^a of set-off, or counterclaim, or of the statute of limitations, or of any defence under any other statute having the force of law in this Province, he shall, not less than six days before the day appointed for the trial, give notice thereof in writing, to the plaintiff, or leave the same for him at his usual place of abode, if living within the division, or if living without the division, shall deliver the same to the clerk of the court in which the action is to be tried; and in case of set-off or counterclaim, he shall deliver to the clerk a copy of the particulars of such set-off, or counterclaim, to be kept with the papers in the cause, and also a copy for the plaintiff, if his usual place of abode is not within the division; and the clerk shall forthwith give to such plaintiff a notice of such set-off, or counterclaim, by mailing the same to him in a letter duly registered, addressed to his usual place of abode or business, according to the form 195, together with one of the copies of the particulars of such set-off or counterclaim; provided that in case of non-compliance with this rule, the judge may on such terms as he shall think fit, adjourn the trial of the action to enable the defendant to give such notice, or may in his discretion, allow such notice to be given, and the trial of the action to proceed at once.

JUDGMENTS AND EXECUTIONS.

SPECIAL SUMMONS—SEVERAL DEFENDANTS.

116. In case there are several defendants, and all of them have not been served with a special summons, then unless the plaintiff is content to take judgment against those served only, judgment cannot be entered by the clerk on his behalf, but the plaintiff will have to proceed to a hearing before the judge as in ordinary cases.

117. In case the notice required by the 109th section of the Act has not been given by a sole defendant, or by one or more of several defendants (and the plaintiff is willing to take judgment against those only), and leave to dispute the plaintiff's claim has not been given by the judge, the clerk, after receiving a return of the "special summons," with the proper affidavit of

service, may, on the twelfth day after the service of the summons, where the return is the eleventh day after service, and on the seventeenth day, where the sixteenth day after the day of service is the return day of such summons; or at any time within one month after such return day, enter judgment against the defendant or defendants so served as aforesaid, for the claim, or so much thereof as has not been disputed, without prejudice to the plaintiff's right to recover for the remainder of the claim.

118. In actions commenced by special summons; where there are more defendants than one, and some of them have been served with process, but have not given notice disputing the plaintiff's claim, and other or others of them have not been served, but have given a confession of the debt, the clerk shall produce or transmit the confession duly proved to the judge for his order, and when the judge's order shall be procured, the clerk may enter judgment within one month after the return of the summons against all the defendants for the amount claimed in the particulars, provided that the defendants who have confessed shall have acknowledged the same amount by their confession, and such judgment may be in the form No. 81, and it shall not be in the power of the plaintiff to elect either to proceed on the confession against some of the defendants, or to obtain final judgment against those defendants who have not confessed, but the judgment shall be entered against all the defendants jointly.

119. In any action brought by special summons against several defendants, if all the defendants have not been served upon the same day and no notice of defence has been entered by the defendant or defendants first served, the clerk may immediately after the expiration of the return day, in the case of each defendant, enter a minute in the procedure book, stating the facts of service and of no defence; and if no defence has been entered by any of said defendants, the clerk may, immediately after the time has expired in which the defendant last served might have entered such defence, sign final judgment against all the defendants.

120. Where there are several defendants in an action commenced by special summons, under section 109 of the Act, and

one or more of defendants has or have given notice disputing the claim of the plaintiff, and another or others of them have not given such notice, the plaintiff may have final judgment entered by the clerk against the latter, and may cause execution to be issued upon such judgment; without prejudice to his right to proceed with his action against such of the defendants as have given the notice.

121. Any defendant who has been minuted as aforesaid, may be let in to defend by the judge on sufficient grounds shown.

122. In case the defendant has given a confession or acknowledgment of debt, and has not put in the notice disputing the plaintiff's claim, the plaintiff may either proceed on the confession, as in ordinary cases, or may obtain final judgment under the 109th section of the Act, as he may elect.

123. In case judgment be not entered by default, on a special summons, within one month after the return day thereof, the clerk shall not enter it afterwards, without an order from the judge.

- (a) When judgment is given against a defendant by the judge, pursuant to section 110, immediate notice thereof shall be given, by the clerk, by letter or postal card, to the defendant.

124. Where, under the provisions of the Act, a writ of execution is required to be executed out of the division, but within the county, the writ may be directed by name of office to the bailiff of any of the Division courts in the county, but shall not be issued to the bailiff in another county. The returns required to be made under sections 103 and 104 must be made to the clerk by whom the process or document has been issued.

JUDGMENTS.

125. Every judgment and order of the court shall be entered by the clerk in the procedure book, according to the forms 77 to 131, inclusive, or to the like effect; and when any order is made for the payment of any debt, damages, costs, or other sum of

money, the same shall be payable at the office of the clerk, at the expiration of fifteen days from the rendering of judgment, unless the judge otherwise orders, but where judgment is signed by the clerk under sections 109 or 111 of the Act, execution may issue forthwith.

126. After an award has been made, and, with an affidavit of the due execution thereof, is filed under the Act, unless the judge otherwise orders, the clerk shall forthwith enter judgment on such award, and shall, at the request of the party entitled thereto, issue execution thereon, at such time and in such manner as upon an ordinary judgment of the court.

127. When judgment is given for the defendant on a set-off or counterclaim, he will be entitled to issue execution and to take proceedings as in ordinary cases for the recovery of the balance of his set-off or counterclaim, if such balance does not exceed a sum within the jurisdiction of the court, or if the defendant files with the clerk a consent in writing to abandon such excess.

128. Where, under section 147 of the Act, the judge suspends or stays any judgment, order or execution, given, made, or issued in the action, and orders the same to be paid by instalments, such instalments shall be payable at such periods as the order directs; and if no period be mentioned, the first shall become due on the 28th day from the day of making the order, and every successive instalment shall become due at a like period of 28 days, from the day of the previous instalments becoming due, and such instalments shall be paid to the clerk of the court.

JUDGMENT, WHERE DEFENCE ONLY FOR PART.

129. Where a motion has been made for judgment, under section 111, and it appears that the defence set up by the defendant applies only to a part of the plaintiff's claim, which is admitted to be due, the clerk shall, by the order of the judge, at the request of the plaintiff, forthwith enter final judgment for such part thereof as the defence does not apply to, or as is admitted to be due.

MOTION FOR JUDGMENT.

130. Where the amount of the claim or debt sought to be recovered in an action exceeds \$40, and the judge has made an order empowering the clerk to sign final judgment, under section 111 of the Act, execution may be issued thereon, at the instance of the plaintiff, at any time thereafter.

- (a) The application of a plaintiff shall be by notice, by the plaintiff, his solicitor or agent, to be served upon the defendant, and no costs in respect of such application shall be taxed in the cause, except for service when made by the bailiff.

131. Where final judgment has been signed by the clerk under section 109, execution may issue forthwith.

132. All executions and warrants shall be printed on half sheets of foolscap paper, in order to afford space for the endorsement of a schedule of property seized and other memoranda proper for the bailiff to enter thereon.

THE CREDITORS' RELIEF ACT.

133. Where any Division court judgment or execution has been, or shall hereafter be filed with any sheriff under the Creditor's Relief Act, or a certificate for any claim within the jurisdiction of the Division court, and the same is not paid in full, and the sheriff is unable to make the money thereon, the creditor may obtain a return thereof from the sheriff according to the facts, and file the same with the clerk of the Division court, in which the judgment was recovered, or in the place where the cause of action arose, or the debtor (or one of the debtors, if more than one) resided, and the clerk of the Division court shall enter the same in the procedure book of the court, and it shall thereupon become a judgment of the said court, for the unpaid balance due thereon, as appearing by the sheriff's return, and the claim may be enforced in the same manner as any other judgment of the Division court.

- (a) Where a claim is not paid in full, and the sheriff's return, under the Creditors' Relief Act, relates to a judgment or execution of the Division court, and is filed with the clerk of the court in which the judgment was recovered, or from which the execution issued—the clerk shall make an entry in the procedure book at the place where the judgment has been so entered, and the effect of the sheriff's return shall therein be set forth (Form 95), and if the sheriff's return shows a part satisfaction of the judgment or execution, the same shall be so stated, and the judgment against the judgment debtor shall stand only thereafter for the residue of the debt or damages, interest and costs.
- (b) Where the sheriff's return relates to a certificate for a claim within the jurisdiction of the Division court that has not been paid in full, and such certificate is filed with the clerk of the Division court in the division where the cause of action arose, or wherein the debtor (or one of the debtors, if more than one) resided—the clerk of such court shall enter the same in the procedure book, as a judgment of such court (Form 96), for the unpaid balance due thereon, as appears by such return, and shall take proceedings thereon, as upon any other judgment of such court.

134. After a transcript of judgment has been issued from the home court to a foreign court or to a county court, the clerk of the home court has no further right to deal with the case, as his functions have ceased therein (except by order of the judge or under the provisions of 52 Vict., chap. 12, section 24), and he cannot, either as agent for the judgment creditor or otherwise, order, in the name of such judgment creditor, or of anyone else, that the money made or paid thereon shall be transmitted to himself or to any other person.

- (a) When, upon the application of any plaintiff or defendant having an unsatisfied judgment in his favor, a transcript of the entry of such judgment, under section 217, or a transcript of the judgment under section

223 of the Act, is issued from the court in which the judgment has been recovered, an entry thereof shall be made by the clerk in the procedure book, and no further proceedings shall be had in the said court upon any such judgment, without an order from the judge, except as provided by section 217 of the Act, as amended by section 24 of 52 Vict., chapter 12; in the case of a judgment of which a transcript has been issued to another Division court.

- (b) Every transcript of a judgment shall be prepared by the clerk upon a full sheet of foolscap paper, carefully written in a plain hand, or printed, without contraction of words or figures, and shall be according to the Forms 164, 164*a*, or 164*b*, and if a judgment has revived, the order of revival or its purport shall be set forth therein.

135. No transcript or copy of a judgment shall be issued or acted upon, under the 215th or 217th section of the Act, where the proceedings have abated, or in a case where no warrant of execution or judgment summons shall have issued on a judgment more than six years old, unless such judgment shall have been revived.

136. In cases that have been brought to trial, the clerk shall not issue any transcript of a judgment until after the lapse of fourteen days from the trial, except upon the order of the judge.

137. The entries of proceedings on a transcript under the 217th section of the Act, may be made in the procedure book, of the court to which it has been sent, in the form of an ordinary suit, as near as may be. And the procedure book shall, for that purpose, be the transcript of judgment book required by the Act.

138. All special judgments or orders shall be prepared by the clerk, or such other person as the judge shall direct. Either party dissatisfied with the judgment or order as so prepared may apply to the judge by motion to vary and finally settle the same; but, except by leave of the judge, such notice shall not operate

as a stay of proceedings. The judgment or order, when finally settled, shall be filed, and a minute of such filing, with the date thereof, shall be entered in the procedure book.

REVIVING JUDGMENTS, ETC.

139. During the lives of the parties of a judgment, or of any of them, execution or other process may be issued at any time within six years from the recovery of the judgment.

140. In the following cases:

- (a) Where any change has taken place after judgment, by death or otherwise, of the parties entitled or liable to execution.
- (b) Where a husband is entitled, or liable to execution upon a judgment or order, for or against his wife.
- (c) Where a party is entitled to execution upon a judgment of assets in future.
- (d) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recovered against such company, or against a public officer or other persons representing such company.

The party alleging himself to be entitled to execution must apply on affidavit to the judge for leave to issue execution accordingly. And such judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties, shall be tried in any of the ways in which any question in any action may be tried; and in either case, such judge may impose such terms as to costs or otherwise as shall be just. No order to issue execution shall be made under this rule *ex parte*, but only after at least three days' notice to the party against whom it is sought to issue execution, unless under special circumstances the judge shall otherwise order.

141. No execution or other process shall, without leave of the judge, issue on a judgment more than six years old, unless some payment has been made thereon within twelve months previously;

but no notice to the debtor, before applying for such leave, shall be necessary, and such leave shall be expressed on the execution or warrant, or summons in the words, "Issued by leave of the judge."

142. The renewal of all writs of execution may be made from time to time, before the expiration thereof, by the clerk of the court issuing the same, by marking on the margin of the writ a memorandum to the following effect :—"Renewed for six months from the date thereof."

Dated day of 18 X. Y., Clerk.

143. Where one or more of several plaintiffs or defendants shall die after judgment, proceedings to enforce the same may be taken by the survivors or survivor, or against the survivors or survivor, without leave of the judge.

CROSS JUDGMENTS TO BE SET OFF.

144. In case there are cross judgments between the parties to an action, the judge, on the application of either party, may, by order, direct the clerk to make an entry thereof in the procedure book, and that the party only, who has obtained judgment for the larger sum shall have execution, and the clerk shall (if required) issue execution thereon in the ordinary form, for the balance over the smaller judgment; and he shall enter satisfaction on the judgment for the smaller sum. If both sums are equal, satisfaction shall be ordered to be entered upon both judgments. (See Forms 223 to 226, inclusive).

CLERKS' AND BAILIFFS' DUTIES.

145. The clerk of every Division court shall have an office at such place, within the division for which he is clerk, as the judge shall direct.

146. The following books shall be kept by the clerk, and the necessary entries fairly made therein, namely: 1st, a book to be called the "Procedure Book," in which shall be entered a note of

all process issued, and of all orders, judgments, transcripts received, warrants, executions and returns thereto, and of all other proceedings, in every cause, and at every court; 2nd, a book to be called the "Cash Book," in which shall be entered, from day to day, an account of all suitors' moneys paid into and out of court; 3rd, a "Debt Attachment Book;" 4th, a "Clerk's Fee Book," for the purposes set forth in section 68 of the Act; 5th, the "Judgment Debtors' Book," provided for by Rule No. 201; and 6th, the "Order Book," required by sub-rule (a) to this rule, which books shall be according to the forms Nos. 4, 5, 6, 7, 8 and 9, and shall be kept, as nearly as may be, in the manner shown therein, respectively.

- (a) The said order book shall be a book in which all orders for the issuing of process or alias, or subsequent summonses, and executions and other documents requiring duties to be performed by the clerk, from day to day, shall be entered and dated as they occur, and signed by the party requiring the same, or his solicitor or agent.

147. After the books which shall be in use, when these rules come into effect, shall have been filled up, the clerks of the respective courts shall keep procedure books in the form No. 4 following and make entries therein according to these rules.

- (a) At the beginning of each such book shall be printed and ruled a page of specimen entries, which shall be taken as suggestive for form of entry therein, according to the nature of the proceeding, as shown by Form No. 4. Entries in the procedure book are to be under and subject to the direction of the judge in all cases.
- (b) At the commencement of each procedure book is to be an alphabetical index bound up within the book.
- (c) The index of the procedure book is to be ruled and lettered the same as ordinary commercial ledger indexes, suited to the size of such book.

- (d) The entries in the said index shall first set forth the names of the parties, defendants, or primary debtors, or garnishees, as the case requires, or of persons or corporations against whom suits or proceedings are taken; and, next, the names of the parties, plaintiffs, or primary creditors, or of persons or corporations at whose suit such proceedings are taken or adopted; and are to be made immediately after each suit or proceeding is entered. The page of such entry shall be properly inserted in the index after the names of the parties, and the year number of the suit, thus:

Under the letters McC.	Year No.	McCrimmon, ats.	Jay-
land	17,1891	Deft.	Plff.
			Page 317.

(In this case, Jayland being the plaintiff, and McCrimmon the defendant, and the letters "ats." meaning at the suit of.)

Under the letter J.	Year No.	Jamison, ats.	McDonald,
	18	Primary debtor.	Primary creditor.
			Page 76.

Under the letter G.	Year No.	Gough.	ats.	Pierson
	19	Garnishee.	Primary	creditor.
				Page 77.

- (e) Every bailiff shall keep a separate book, "Fee Book," in which he shall enter, from day to day, all fees, charges and emoluments received by him by virtue of his office, as required by section 68 of the Act, and which shall be according to the Form No. 12.

- (f) On the 15th day of January in every year, he shall make up to and including the 31st day of December of the previous year, a return to the inspector, under oath showing the aggregate amount of fees, charges and emoluments so received by him by virtue of his office, and which he has become entitled to receive and has not received during the year.

- (g) In the return made by the clerk shall be shewn the actual amount of the disbursements during the same year in connection with his office.

- (h) Every clerk of a Division court for a division embracing a city, or part of a city, shall keep a separate book, in which he shall enter from day to day all fees, charges and emoluments received by him by virtue of his office, shewing the sums received by him for fees, charges, and emoluments of all kinds whatsoever; and shall, on the 15th day of January in each year, make up to and including the 31st day of December in the previous year, a return to the Lieutenant-Governor, under oath, of such fees, charges and emoluments so received by him during the said year.
- (i) Every clerk shall, on or before the 15th day of January in each year, make a return of the business of his office, for the year ending the 31st day of December preceding, in such manner as the Lieutenant-Governor shall direct.

148. The clerk shall number every claim in the order in which it is received by him: the numbering to show the standing of the suit, in respect to the whole number of suits entered in the court for the then current year.

149. In any case where the proceeding by special summons is warranted, it shall be adopted by the clerk, unless otherwise ordered by the plaintiff.

- (a) Where a plaintiff orders an ordinary summons to be issued for a claim for which a special summons would be warranted, and no notice of defence is entered, and the case comes to court, no more costs shall be allowed the plaintiff than would be taxed upon a judgment by default on special summons.

150. The clerk shall annex to every summons the copy of claim entered with him, according to section 95 of the Act; and to each copy of summons to be served, shall be likewise annexed a copy of such claim; and it shall be deemed a part of the summons.

151. The clerk shall enter in the procedure book the full amount of moneys returned by the bailiff with an execution, and shall show therein the amount which he has taxed and paid the bailiff as his fees for executing the same.

152. All the papers in the cause received or filed by the clerk shall be kept by him together in the original summons, and be produced by the clerk at the hearing of the cause, or when required on application to the judge. The original summons, in all cases, shall be printed on a half-sheet of foolscap, in order that the papers may be kept therein.

153. Every clerk, upon being furnished with the necessary postage or post card, is expected and enjoined to answer promptly all reasonable enquiries made touching suits by the parties thereto, their solicitors or agents.

THE TRIAL LIST.

SERVICE OF SUBPENA IN FOREIGN DIVISION.

154. The clerk of any Division court shall, when required, forward all summonses to the clerk of any other Division court in the same or any other county for service, and the clerk of such other Division court who shall receive any summons sent to him, by the clerk of another Division court, shall hand the same to the bailiff for service, and when returned shall receive the same from the bailiff, and prepare the necessary affidavit of service, and upon payment of his fees and the fees for such service, shall return it to the clerk from whom he received it, with the necessary affidavit verifying the service and mileage.

(a) Every clerk receiving such summons for service shall enter all such proceedings in a book, to be called the foreign summons book (Form No. 10), to be kept by him for the purpose of recording the same.

(b) No clerk or bailiff is authorized to receive money from a defendant or primary debtor, or garnishee upon a claim or suit where the summons is merely forwarded for service, or served under this rule, either as agent

for the party, or as clerk or bailiff of the court, or otherwise. This rule shall not be held to apply in the case of a clerk or bailiff who is post-master receiving and transmitting money by means of postal money order, under regulations of the post office department.

155. The clerk shall, for each sitting of the court prepare, three lists, viz: a Jury list, in which he shall enter all cases to be tried by a jury; a Judge's list, in which he shall enter all cases to be tried by the judge alone, and a judgment debtors' list, in which he shall enter all cases in which the judgment debtor has been summoned for examination under section 235.

- (a) In the jury list, and judge's list respectively, all causes in which the sum sought to be recovered, does not exceed \$100, shall be entered first; and subsequently all causes in which the sum exceeds \$100, and subject to this provision, causes shall be entered in the jury list and judge's list, respectively, in the order in which they were in the first instance entered with the clerk; and in the judgment debtors' list, they shall be entered in the order in which the summonses for examination were issued.
- (b) All interpleader issues, in which the money claimed, or the value of the goods or chattels claimed, or of the proceeds thereof exceeds \$100, or where the damages claimed by either party against the other or against the bailiff exceed the sum of \$60, shall be entered among the causes in which the sum sought to be recovered exceeds \$100.
- (c) Nothing in this rule provided shall interfere with the discretion of the judge to dispose of the causes at any such sitting of the court in the order that may seem most convenient to him.
- (d) The lists shall be divided into and ruled with the following 6 headings, viz. :—
 - 1st. The number on the list (to be stated consecutively).

- 2nd. The year number of the summons.
- 3rd. The style of the cause.
- 4th. The nature of the subject of the action, whether on contract or for tort, or in replevin, or an interpleader, or a judgment summons, etc.
- 5th. The amount claimed (if any.)
- 6th. The judgment, or order, or disposition made of the case by the judge.

TRIAL BY JURY.

156. In case any party has required a jury to be summoned to attend any sitting of the court, the clerk shall issue a summons, and also twelve copies thereof for service on the jurors, and shall deliver them to the bailiff for service. Upon the return of the original summons by the bailiff, the clerk shall prepare an affidavit of service and of the mileage necessarily incurred to effect such service, which affidavit shall be sworn by the bailiff.

PROCEEDINGS IN TRANSFERRED CASES.

157. The clerk, upon receiving the papers and proceedings in any action transferred to the court of his division under section 87 of the Act, shall at once enter the proceedings in his procedure book, and number the action in the regular order as if it were a new action commenced on the day he received said papers and proceedings, and shall place the action on the list for trial, and take all further proceedings in the action, in the manner directed by section 87.

158. After receiving the papers he shall forthwith notify the parties or their agents by mailing them registered notices informing them of the date, hour and place of the sittings at which such case is to be tried.

159. The clerk of the court who issued the summons shall certify to the court to which the case is transferred, in detail, all the costs incurred in the suit up to the date of transfer, inclusive.

160. When final judgment is entered by the clerk, the clerk is to file the summons and particulars of claim, with the affidavit of the due service of both.

POSTPONED JUDGMENT.

161. In case the judge shall at the trial postpone pronouncing his decision, and shall either omit to name a subsequent day and hour for the delivery thereof in writing at the clerk's office, as provided by section 144, or having named such day and hour, shall omit to give his decision thereat, and shall not have duly extended the time for giving the same, his decision may subsequently be given by him at any regular sittings of the court, or in writing at the clerk's office, upon a day and hour to be fixed by the judge; provided that written notice of his intention to do so shall have been sent to the parties, or their solicitors or agents, by registered letter, at least ten days prior to said sittings, or to the day so fixed by the judge, either by the judge or by the clerk of the court; such letters to be addressed to them at the addresses given by them in pursuance of Rule No. 241; if such addresses have been given; and if not, then at their last known places of abode.

162. In case the defendant shall have given the clerk notice that he disputes the plaintiff's claim, or any other notice of which the plaintiff should be informed before the trial, or if the defendant has given a confession, or failed to give notice of defence when required, the clerk shall immediately send the plaintiff notice thereof.

163. The clerk of every Division court shall, immediately after the receipt of any sum of money for any party to an action, forward through the post office, to the party entitled to receive the same, a notice, enclosed in an envelope, addressed to such party, or in case of a transcript of judgment from another court, then to the clerk who issued the same, at his proper post office address, informing him of the receipt of the money. The notice thus sent shall be prepaid and registered, and the clerk shall obtain and file among the papers in the action the post office certificate of the registration, and shall be at liberty to deduct.

the postage and charge for registration from the moneys in his hands, but he shall charge no fee for the notice. The absence from among the papers in the action of the certificate of registration shall be *prima facie* evidence against the clerk that the notice has not been forwarded.

164. The clerk and bailiff of the court shall not upon any pretence whatever withhold any moneys received for suitors, on the ground that any clerk or bailiff may be indebted to the officer holding such money either for fees or costs or otherwise; but all such moneys, when received or collected, shall at once be duly paid over to the order of the party entitled to the same without reference to such accounts.

165. Where money is received by the clerk on a suit entered by a solicitor or agent who has paid the deposit, or is responsible for costs to the clerk, such money shall not without notice to the solicitor or agent be paid out to the person beneficially interested therein, unless upon the order of the judge.

NOTICE TO DEFENDANT OF PLAINTIFF PROCEEDING FOR REMAINDER OF CLAIM.

166. In case the plaintiff has signified in writing his intention to proceed for the remainder of the demand claimed, the clerk shall notify the defendant, by post, or by sending notice to his usual place of abode or business, and the notice shall state when and where the case is to be tried.

NOTICE OF LEAVE GRANTED TO DEFEND.

167. When, the judge has, by order, granted leave to a defendant to dispute the plaintiff's claim, and the defendant has left with the clerk the requisite notice, as provided by section 112 of the Act, the clerk shall send to the plaintiff, his solicitor or agent, notice of such order, specifying at what sittings of the court the case will be tried.

168. In any case in which the defendant, primary debtor or garnishee, or a third party claimant in a garnishee proceeding, or any other person intervening or claiming any interest in the suit,

has given the clerk notice that he disputes the claim of the plaintiff or primary creditor, or any other notice of which the the plaintiff or primary or attaching creditor should be informed before the trial, or in any case in which it has become the duty of the clerk to give notice to any party to a cause of any defence, admission, judge's order or other matter, of which he should be notified before the trial, such notice must show the place and time of the sittings of the court at which the cause is to be heard.

169. When any notice required to be given to any of the parties to a suit is sent through the post office, the clerk shall register the letter containing such notice, and shall obtain and preserve with the other papers in the suit, a certificate of such registration.

TENDER.

170. When a defendant pays money into court, in part payment of the amount claimed (section 125), or in order that he may rely on the defence of tender (section 122), and the plaintiff does not accept in satisfaction of the action the sum so paid into court, the money shall not be paid out until after the judgment, and any costs which shall have been awarded to the defendant shall be deducted therefrom and paid to the defendant.

TENDER OR PAYMENT OF MONEY INTO COURT.

171. In case a defendant pays into court a sum of money in full satisfaction of plaintiff's demand, together with costs, under section 125 of the Act, or pleads a tender before action brought and pays money into court, under section 122 of the Act, the clerk shall give to the plaintiff or his agent notice thereof forthwith by post (on receiving the necessary postage), or shall send the same to his usual place of abode or business.

APPLICATION FOR NEW TRIAL.

172. In event of an application for a new trial, in a case in which the sum sought to be recovered exceeds \$100, if the evidence has been taken down in writing, the clerk shall forward the same with such application and for the purposes thereof.

173. Upon application for a new trial, when either party appeals and leaves papers requiring service upon the opposite party with the clerk, or at his office, under section 150, the clerk shall forthwith mail, by registered letter, all such papers to the person or party entitled to the same, or his solicitor or agent, upon payment of the postage and his fees for transmitting.

TAXATION OF COSTS.

174. In every case the clerk shall make out a bill of costs in detail, and the same may be endorsed upon or annexed to the original summons and may be in the form shown No.

- (a) Where practicable, the costs of an action or matter shall be taxed by the clerk on the day on which the action or matter is tried or heard, and every taxation shall be subject to revision by the judge or acting judge.

175. On payment of a fee of 10 cents, every clerk, when required by parties paying costs, shall give a statement in writing of items of all costs, including bailiffs' fees in detail, and upon being furnished with the necessary postage or post card, transmit the same by post.

RETURNS.

176. The clerk shall, on the 15th day of January, in every year, make, up to and including the 31st day of December of the previous year, a return to the inspector, under oath (on forms to be furnished to him), shewing the aggregate amount of fees, charges and emoluments received by him, and which he has become entitled to receive and has not received, during the year.

177. He shall transmit to the treasurer of the province, on the 15th day of January in every year, a duplicate of the said return, and shall also pay to the treasurer, for the use of the province, such proportion of the fees and emoluments earned by him during the preceding year as under the Division Courts Act (section 59) he is not entitled to retain to his own use.

178. The list of unclaimed moneys, required by the 49th section of the Act, shall be made under oath, according to the form No. 221, and shall, in the month of January in each year, be transmitted by the clerk, together with the moneys (if any) therein mentioned, to the county crown attorney, and if no money remains unclaimed, the fact shall be stated in the affidavit.

179. At the opening of every court, and at such other times as the judge shall require, the clerk shall lay before the judge the returns of bailiffs, under Rule 193, duly certified under Rule 194. (See Form 239.)

180. The clerk shall, at every sitting of the court, report in writing to the judge as to the several sureties of himself and the bailiff or bailiffs of his court, showing whether any of them have died, become insolvent or left the country since his last report, and mentioning any facts connected therewith which ought to be made known to the judge.

181. Every Division Court clerk shall make a return to the inspector of Division Courts, on or before the 15th day of January in every year, showing the number of judgment debtors who, during the twelve months ending the 31st day of December, previously, were ordered to be committed, and also of those who were actually committed, under each of the five heads mentioned in section 240 of the Act.

TRANSFER OF CASES TO THE HIGH COURT.

182. Where an order of transfer is made, under the Judicature Act, or the Division Courts Act, the clerk of the court in which the proceedings were instituted, or the suit is pending, shall annex together all the proceedings and papers filed with him, and transmit the same, together with the order of transference or a copy thereof, to such officer of the High court as the order directs.

BAILIFF'S DUTIES.

183. Every bailiff receiving summons for service from a clerk shall promptly serve the same, and shall, immediately after service has been effected, make a return to such clerk, showing the mode

of service, and unless such return be duly made within six days after such service, the bailiff shall not be entitled to the fee for return and attendance and making affidavit; and where a summons has not been served, the bailiff shall, immediately after the time for service has expired, return the same to the clerk, stating the reason for non-service, in writing, on the back of the summons.

184. The bailiff shall attend every sittings of the court at the place appointed for holding the same, at such time as shall be required by the judge, and shall see that all suitable preparations are made for the proper accommodation of the court. He shall make all necessary proclamations, preserve order, call the parties and witnesses, and perform such other duties thereat as may be imposed by the judge.

185. The bailiff shall keep a book (see Form No. 11), to be called "The Bailiff's Process Book," and he shall enter therein every warrant or execution which shall have been delivered to him to execute, and shall enter from time to time therein what he shall have done under or with such warrant or execution; and if the same be not executed according to the exigency thereof, why it was not so executed; and he shall, at all reasonable times, give to every party interested every information he may require as to the execution or non-execution of any such warrant or execution; and the book so required to be kept shall, at all reasonable times, be open for inspection of the judge or clerk.

- (a) Bailiffs must return an execution within thirty days prescribed by the Act (section 220) unless it has been renewed at the instance of the execution creditor before the expiration of the thirty days, or, unless the seizure under the execution has been so recent, that he has been unable to advertise and sell the property within the thirty days; in which latter case he must make a report to the clerk of the condition of matters and of the facts of the case, so as to enable the clerk to report them to the execution creditor.

- (b) In case the bailiff has offered the property for sale (after duly advertising it), without being able to either effect a sale or to realize a reasonable amount therefor, he must not sacrifice the property, but must offer it for sale again, if within the thirty days, and if after the thirty days and the execution has not been renewed, the execution must be returned—"Property on hand for want of buyers."
- (c) If an execution is returned by the bailiff—"Property on hand for want of buyers," after the thirty days, the clerk cannot renew the execution, but must issue another process—directing the bailiff to sell the property on hand for what it will bring.
- (d) The whole of the money for debt (or damages), costs, interest, bailiff's fees and percentage (but not disbursements) must be paid over by the bailiff to the clerk from whom he received the execution; and after the bailiff's fees and charges are duly taxed, the clerk must pay the bailiff's proper taxable fees on executions, duly returned according to law, and none others.

186. Every bailiff receiving any money by virtue of his office, shall, immediately after the receipt thereof, pay over the same to the proper clerk, and neglecting or failing to do so, shall be subjected to the loss of his office.

187. The bailiff, or other officer executing any warrant of commitment, shall, at the time of delivering the party arrested to the gaoler, deliver to such gaoler the warrant of commitment, and shall endorse thereon the amount of his fees and mileage, and a statement of the actual day of the arrest.

188. The bailiff receiving an execution shall immediately endorse on the same a correct statement of the day and hour of the day when he receives such execution, and in addition to the formal return (Forms 235 to 237 inclusive) on every execution returned, he shall give a correct and full statement of the par-

ticulars, in detail, of all his charges made for fees and disbursements in the execution thereof; and a similar statement in making returns of writs of replevin and warrants of attachment.

189. Every bailiff shall keep a cash book (Form No. 13) in which shall be entered all payments received by him of moneys on executions or otherwise, from the defendants or garnishees or others.

190. In case a 'summons' is not served in time to make the notice of the sittings of the court, at the foot of "warning No. 2," available for the information of the defendant, the bailiff shall return the same forthwith to the clerk who issued the summons, and the clerk shall add a new notice of the proper days of the week and month on which the two or more ensuing sittings of the court are to be held, and shall forthwith return or transmit the same to the bailiff for service, and the proceeding herein directed may be repeated from time to time until due service is effected.

191. In case such summons has been sent to a foreign court the bailiff shall return it to the clerk of that court for transmission to the clerk of the home court, who shall add the new notice above provided for.

192. Every summons must be served ten or fifteen days (according to the residence of the defendant) before the holding of the court at which it is returnable (neither the day of service nor the day of holding the court to be counted).

193. At every sitting and at such other times as the judge shall require, the bailiff shall deliver to the clerk of the court a statement or return on oath (Form 239), of every warrant and writ of execution in his hands, and of what shall have been done since his last return, under every warrant and writ of execution, which he shall have been required to execute.

194. The return mentioned in the last rule, shall be filed by the clerk in his office, and be open, without fee, to the inspection of any person interested; and the clerk shall examine such

return, and if found correct and complete, within ten days after the receipt thereof, shall endorse thereon a memorandum in the following words: "I have carefully examined the within return, "the same is full, true and correct in every particular, to the "best of my knowledge and belief. Dated the day of " 18 , clerk." And if such return be found by the clerk to be incorrect or incomplete, he shall forthwith give notice thereof to the judge, and if no return be made he shall notify the judge.

195. In case the proceedings in any suit shall be hindered or delayed by the neglect or misconduct of the clerk or bailiff of a foreign court or of the home court, the clerk or bailiff causing the same shall forfeit all fees in such suit, and shall, in addition thereto, pay any loss or damage that may result from such hindrance or delay to the party suffering therefrom.

196. No clerk or bailiff shall, directly or indirectly, purchase or be concerned in the purchase, or have any personal interest in a suit or judgment or claim in suit, in the court of which he shall be an officer, and any clerk or bailiff transgressing this rule shall be subjected to the loss of his office.

197. No clerk or bailiff shall, either by himself or his partner in business, be engaged either directly or indirectly as agent for any party, during the conduct of the cause in court,—and any clerk or bailiff transgressing this rule shall be subjected to the loss of his office.

198. In case a defendant determines to settle an action or pay the demand of a plaintiff, or pays money into court under section 125, such settlement of the amount or payment of money into court, must be made with or to the clerk of the Division court in which the suit was entered, or the proceedings thereof are being carried on.

199. No bailiff of any court shall have the right or be allowed to take or receive any money from any defendant or party in any cause, either in settlement or on account of any debt sued or claimed, or of the costs thereon, except in cases in which he has

an execution in his hands against the defendant or party, or a warrant of commitment, and no clerk shall have the right or be allowed to take or receive any money from any defendant or party in any cause, either in settlement or on account of any debt or costs, unless a suit has been commenced in his own court for the recovery thereof, or the claim is actually in his hands for suit or a transcript of judgment against the defendant or party has been sent to him from some other court.

JUDGMENT SUMMONS.

200. A party having an unsatisfied judgment, who desires to proceed under the 235th and subsequent sections of the Act, shall file with the clerk an affidavit (Form No. 33), or to the like effect, and thereupon a summons (Form No. 54), bearing the proper new number in its order, shall be issued ; if the proceeding be taken in a Division court other than that in which the judgment was entered, there shall be delivered to the clerk a transcript of such judgment.

201. In order that a party who after examination has been discharged by the judge may not be again summoned for examination at the suit of the same or any other creditor, without notice of such examination, every clerk shall keep a book in which entries may be made in the form of an index, to be called the "Judgment Debtors' Book," (Form 8), in which shall be entered the date when each judgment debtor was examined and discharged by the judge, together with the number and style of the cause in which he was summoned and examined.

202. In case a judgment debtor, who resides more than three miles from the place of the sitting of the court, is summoned under section 235 of the Act, and does not attend, such non-attendance shall not be considered wilful, unless he shall have been paid or tendered, when summoned, a sum equal to seventy-five cents for his day's attendance, and ten cents for each mile, from his place of residence to the place of such sitting of the court. Such payment to be costs in the cause, unless otherwise ordered by the judge.

WARRANTS OF COMMITMENT.

203. Warrants of commitment shall bear date on the day on which the order for commitment is made, and shall have endorsed thereon the amount of debt and costs on such proceedings, or of fine and costs, up to the time of its delivery to the bailiff for execution, and shall continue in force for six calendar months from such date and no longer, unless renewed by an ex parte order of the judge upon affidavit showing the cause of the non-execution, and that the moneys payable thereunder have not been satisfied. (Forms 162 and 162a).

204. Upon application (which may be made ex parte) founded upon affidavit, showing to the satisfaction of the judge the cause of the non-execution of such warrant, and that the moneys payable thereunder have not been satisfied, such judge may, during the continuance of the warrant of commitment, order that the same may be renewed for a further period. Such renewal shall not be for a period exceeding six calendar months, and may, in the discretion of the judge, be for a less period.

205. The renewal of a warrant shall be made by the clerk, and shall be marked on the margin of the warrant, or by endorsing thereon—"Renewed by judge's order for
calendar months from the day of

A.D. 18 .

X. Y.,
Clerk."

PAYMENT ON ARREST.

206. When a warrant of commitment is issued, the defendant may, at any time before his body is delivered into the custody of the gaoler, pay to the bailiff the amount endorsed on the warrant, as that on the payment of which he may be discharged, and the bailiff shall forthwith give a receipt therefor. On receiving such amount, or at request of the judgment creditor, in writing, the bailiff shall discharge the defendant, and shall, within twenty-four hours after receiving such amount, pay over the same to the clerk of the court who issued the warrant.

AMENDMENTS AND CHANGE OF PARTIES.

207. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff or plaintiffs, the court or a judge, if satisfied that it has been so commenced, through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, may order any other person or persons to be substituted or added as plaintiff or plaintiffs, upon such terms as may seem just, but no person shall be added or substituted as plaintiff without his own consent.

208. In case it is found that a wrong party, as defendant, primary debtor or garnishee, has been sued or served with a summons, and it is desired to add a party under section 108, the judge may grant an order therefor, after action commenced, ex parte, provided those persons who have been already made parties have not been served with the summons. If the application be made after service of summons, the order adding other parties, as defendants, primary debtors or garnishees, must only be granted upon notice to those parties who have been already served with the summons.

209. In case an amendment is directed or allowed to be made at the trial, it shall not be necessary to draw up or issue an order therefor; the amendment may be at once made, or a minute of the amendment to be made may be entered in the procedure book. (C. J. R. 446.)

210. Where several persons are made defendants, and all of them have not been served, the name or names of the defendant or defendants, who have not been served, may, at the instance of either party, be struck out by order of the judge, on such terms as he shall think fit; and the cause shall then proceed against the party served as to set-off, counterclaim and other matters, as if all the defendants had been served.

211. Any application to add or strike out, or substitute a plaintiff or defendant may be made to the judge at any time

before trial, by motion or notice, or at the trial of the action in a summary manner.

212. In any case wherein it appears to the judge, that a party defendant has been improperly added, merely for the purpose of giving the court jurisdiction or colorable jurisdiction, over a cause of action, to the prejudice or inconvenience of another defendant or otherwise, the judge may, in his discretion, strike out the name of such party and disallow all costs that may have been incurred by making him a defendant, and allow him such costs as he has been put to by reason of having been made such defendant; and thereby leave the remaining parties to their rights, whatever they may be, as to jurisdiction or otherwise.

213. When a person, other than the defendant, appears at the hearing, and admits that he is the person whom the plaintiff intended to charge, his name may be substituted for that of the defendant, if the plaintiff consents, and thereupon the cause shall proceed, as if such person had been originally named in the summons; and, if necessary, the hearing may be adjourned, on such terms as the judge may think fit; and the costs of the person originally named as defendant shall be in the discretion of the judge.

214. Where a party sues or is sued in a representative character, but at the hearing it appears that he ought to have sued or been sued in his own right, the judge may, at the instance of either party, and on such terms as he shall think fit, amend the proceedings accordingly, and the case shall then proceed in all respects as to set-off, counterclaim and other matters, as if the proper description of the party had been given in the summons.

215. Where a party sues or is sued in his own right, but at the hearing it appears that he ought to have sued or been sued in a representative character, the judge may, at the instance of either party and on such terms as he shall think fit, amend the proceedings accordingly, and the case shall then proceed in all respects as to set-off, counterclaim and other matters, as if the proper description of the party had been given in the summons.

216. No action or matter shall be defeated by reason of the misjoinder or nonjoinder of parties, and the judge may, in every action or matter, deal with the matter in controversy so far as regards the rights and interests of the parties actually before him. The judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties be added, whether plaintiffs or defendants who ought to have been joined, or whose presence before the judge may be necessary in order to enable him effectually and completely to adjudicate upon and settle all the questions involved in the action or matter. No person shall be added as a plaintiff, suing without a next friend, or as the next friend of a defendant under any disability, without his own consent in writing thereto. Every person whose name is so added as defendant shall be served with a copy of the order so adding him, and the proceedings as against such party shall be deemed to have begun only on the service of such order.

217. Where it appears at a trial that a less number of persons have been made plaintiffs than by law required, the name of the omitted person may, at the instance of either party, be added, by order of the judge, on such terms as he shall think fit, and thereupon the action shall proceed, in all respects, as if the proper persons had been originally made parties; and if such person shall, either at the trial or at some adjournment thereof, personally, or by writing, signed by him or his solicitor, consent to become a plaintiff in manner aforesaid, the judge shall then pronounce judgment as if such person had originally been made a plaintiff, but if such person shall not consent to become a plaintiff in manner aforesaid, either at the trial or at the adjournment thereof, the action or matter shall be struck out.

218. Where the name or description of a plaintiff in the summons is insufficient or incorrect, it may be amended, at the instance of either party, by order of the judge, on such terms as he shall think fit, and thereupon the action shall proceed in all respects as if the name or description had been originally such as it appears after the amendment has been made.

219. Where the name or description of the defendant in the summons is insufficient or incorrect, it may be amended, at the instance of either party, by order of the judge, on such terms as he shall think fit, and thereupon the action shall proceed, in all respects, as if the name or description had been originally such as it appears after the amendment has been made ; and if no objection is taken to the name or description, the action may proceed, and in the judgment and all subsequent proceedings founded thereon, the defendant may be named and described in the same manner.

220. In actions or matters by or against a husband, if a wife or a husband be improperly joined or omitted, or if one of them be improperly substituted for the other, the summons may at the trial be amended, at the instance of either party, by order of the judge, on such terms as he shall think fit, and thereupon the action shall proceed, in all respects, as if the proper person had been made a party to the action.

221. Where a defendant is added or substituted, except where a defendant is substituted under rule 213, an order shall be drawn up, and together with a copy of the summons and particulars of claim, and a notice, setting forth the day and place upon and at which he is to attend at the court, shall be served upon him, according to the practice in the case of service of ordinary summons.

WHERE A PERSON BROUGHT IN DOES NOT APPEAR AT THE TRIAL.

222. If a person not originally a party to the action, who has been served with a copy of an order adding him as a party, does not appear at the trial, the judge may proceed with the trial, notwithstanding, and give such judgment or make such order as may be just against the person so served and not appearing, or may adjourn the trial, and give such directions and make such order as to costs as he shall think fit.

223. An action or matter shall not become abated by reason of the marriage, death or insolvency of any of the parties, if the

cause of action survive or continue, and shall not become defective by the assignment, creation or devolution of any estate or title pendente lite, and whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered notwithstanding the death.

CHANGE OF PARTIES BEFORE JUDGMENT.

224. Where, by reason of any event occurring after the commencement of any action or matter, there shall be any assignment, creation, change, transmission or devolution of the interest, estate or title of any plaintiff in any action or matter before judgment, the person to, or upon whom such interest, estate or title has come or devolved, may give notice thereof to the clerk, with his name and address, together with an affidavit of the truth of the fact stated in such notice.

- (a) And thereupon such clerk shall cause a copy of such notice to be given to the defendant in the action or matter, in which shall be embodied a notice that, unless upon a day to be named therein he appears and shows cause against the same, the person to or upon whom such interest, estate or title has come or devolved, will be substituted for, or made a joint plaintiff with the plaintiff named in the original summons.

SUBSTITUTION OF A DEFENDANT.

225. Where, by reason of any event occurring after the commencement of any action or matter, there shall be any assignment, creation, change, transmission or devolution of the liability, interest, estate or title of any defendant, in any action or matter, before judgment, the plaintiff, or the defendant or the person to or upon whom such liability, interest, estate or title has come or devolved, may, in like manner, give notice to the clerk, who shall take proceedings thereon, similar to those prescribed by the last

preceding rule, and a defendant may be substituted or added, as the case may be, in manner similar to that provided in such rule for the substitution or addition of a plaintiff.

CHANGE OF PARTIES OR NEW CAPACITY.

226. Where, by reason of any event occurring after the commencement of any action or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the action or matter, it becomes necessary or desirable that any person, not already a party, should be made a party, or that any person, already a party, should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties and such new party may be obtained, before or at the trial, on application to the judge, upon an allegation of such change or transmission of interest or liability, or of such person interested having come into existence.

NOTICE OF ORDER THEREFOR.

227. An order obtained as in the last preceding rule mentioned shall, unless the judge shall otherwise direct, be served upon the continuing parties, or their solicitors, and also upon each such new party, unless the person making the application be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following rules, be binding on the persons served therewith, and every person served therewith, who is not already a party to the action or matter, shall be bound to appear at the trial, and in the same manner as if he had been served with a summons.

228. Where any person, being under no disability, or under no disability other than coverture, or being under any disability other than coverture, but having a guardian ad litem in the action or matter, shall be served with such order as mentioned in Rule 226, such person may, at or before the trial, apply to the judge to discharge or vary such order.

229. Where any person, being under any disability other than coverture, and not having a guardian ad litem in the action or

matter, is served with any order as mentioned in Rule 226, such person may, before or at the trial, apply to the judge to discharge or vary such order.

230. When the plaintiff or defendant in an action or matter dies, and the cause of action survives, but the person entitled to proceed fails to appear on the return day, the trial may be adjourned or judgment may be entered for the defendant, or (as the case may be) for the person against whom the action or matter might have been continued; and in such case, if the plaintiff has died, execution may issue, as provided by Rule 140.

231. Where a plaintiff or defendant is substituted, or added, or there is a change of parties under these rules, the procedure book shall show the same by proper entries thereof, and if necessary the cause thereafter may be entered in a new place in the procedure book, retaining the original year number of the cause, and all subsequent proceedings are to be carried on under the altered title with the same year number.

GENERAL RULES.

232. Claims by or against husband and wife may be joined with claims by or against either of them separately.

233. The court has no jurisdiction to try an action upon a note of hand, whether brought by a payee or any other person, the consideration, or any part of the consideration of which, was any gambling debt, or for spirituous or malt liquors, or other like liquors, drunk in a tavern or ale-house. The term "note of hand" in the Act and in this rule shall be held to include promissory notes, bills of exchange, cheques, orders for the payment of money, due bills, I. O. U.s', and all evidence of debt under the hand of the debtor.

INFANTS.

234. A minor may sue in a Division court for any sum not exceeding \$100, due to him for wages, in the same manner as if he were of full age.

235. Where a minor applies to enter a suit for any cause of action other than for wages, or is a claimant in an interpleader proceeding, he shall procure the attendance of a next friend at the office of the clerk, at the time of entering the same, who shall sign an undertaking (Form 194) to be responsible for costs; and the cause shall proceed in the name of the infant by such next friend, but no order shall be necessary for the appointment of such next friend. If the plaintiff or claimant fail in, or withdraw, or discontinue his suit, and do not pay the amount of costs awarded against him, proceedings may be taken for the recovery of such amount from the next friend, as for the recovery of any judgment debt.

FORMAL OBJECTIONS.

236. No proceeding shall be defeated by any formal objection.

237. Non compliance with any of these rules shall not render any proceeding in any action or matter void, unless the judge so directs, but such proceeding may be set aside, either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the court or judge thinks fit.

238. No application to set aside process or proceedings for irregularity shall be allowed, unless made within a reasonable time, nor if the party applying has taken a fresh step, after knowledge of the irregularity.

239. The judge may at any time, and on such terms as to costs and otherwise as to him may seem just, amend any defect or error in any proceedings; and all such amendments may be made as may be necessary for the advancement of justice, determining the real question raised by or depending on the proceedings, and best calculated to secure the giving of judgment according to the very right and justice of the case.

240. All notices required by these rules, or by the practice of the court, shall be in manuscript or print, unless expressly authorized by the court, or a judge, or by these rules to be given orally.

PARTIES TO LEAVE ADDRESS WITH CLERK.

241. Whenever the plaintiff shall enter his claim for suit, or the defendant or any other party shall give notice of set-off, counterclaim or other defence, he shall give to the clerk his address, or that of his solicitor or agent, and the delivery of any notice to such plaintiff or defendant or other party, his solicitor or agent, or the mailing thereof by the clerk to such address, shall be a sufficient service, but the judge may, in his discretion, put off a trial, or set aside, or stay proceedings, on his being satisfied that there is good cause so to do.

AS TO UNAUTHORIZED FORMS AND PROCEEDINGS.

242. All proceedings, books and documents shall be in forms similar to the forms to these rules appended, where the same are applicable, and no printed forms shall be used by any clerk or bailiff of a Division court unless in accordance with the forms appended to these rules, and if an unauthorized form shall be used no fee shall be payable to the officer in respect thereof, and in cases where no forms are provided, parties shall frame the proceedings or documents using as guides those appended to these rules.

- (a) Any printed forms or books which, with the approval of the judge, have been used previous to the framing and approval of these rules, may be used, unless and until the judge shall otherwise order.

243. Except where otherwise provided by statute or by these rules, no order giving leave to take any proceeding need be drawn up or served unless the judge shall otherwise order; but such leave shall be minuted in the procedure book.

PAYMENT INTO COURT.

244. When the plaintiff shall, in accordance with the 123rd or 126th sections of the Act, signify to the clerk his intention to proceed for the remainder of his demand, and such signification shall be given within three days after he received notice of the

payment into court, but after the rising of the court at which the summons was returnable, the case shall be tried at the then next sittings of the court, and be put upon the list for that court in the regular order, but upon application to him at any time the judge may further postpone the trial.

245. When an action has been stayed, under the provisions of section 123 or of section 126 of the Act, the judge shall have power, upon application made for that purpose by the plaintiff, explaining in a satisfactory manner his omission to signify his intention to proceed, and after hearing the parties, to remove such stay and to allow the action to proceed, upon such terms as he shall deem just.

246. In an action of detinue the defendant may, with a tender of the subject of the action for the detention whereof the action is brought, pay money into court as compensation for damages for the detention thereof, and for injury caused thereto, or either or both, with costs of the action.

- (a) Where the defendant is desirous of paying money into court, pursuant to this rule, the practice respecting the same shall, in all respects, be regulated by that under which a defendant may pay money into court in other actions, as provided by the Act and these rules.

SUITORS' MONEYS: HOW PAYABLE.

247. All moneys are payable to the parties at the office of the clerk, without the payment of any fee whatever. In case a party desires that the money shall be transmitted to him, he shall give to the clerk written directions as to the mode of transmission, and in the absence of such directions the clerk shall not in any case transmit moneys of suitors. Moneys transmitted according to such directions shall be at the risk of the party who gave them. All necessary expenses incurred in transmission of moneys shall be borne by the party to whom transmitted, and may be deducted by the clerk.

248. When the clerk issues and transmits a transcript to the clerk of any other division, the plaintiff or person entitled to such money, may by an order in writing, endorsed on the transcript, signed by such plaintiff, or person, direct the clerk of the foreign court to pay over the money, when collected, to the transmitting clerk or clerk of the home court, or in any other way the person so entitled may desire and direct.

249. All summary applications to a judge in chambers, other than applications for new trials, may be made on notice or by summons.

250. When anything required by the practice of the court to be done by either party, before or during the hearing, has not been done, the judge may, in his discretion and on such terms as he shall think fit, adjourn the hearing to enable the party to comply with the practice.

251. All applications to the judge to set aside or stay any order, judgment, process or proceeding in any cause or matter in a Division court, and all other applications, except in matters which may be disposed of upon an *ex parte* application to the judge, and applications otherwise specially provided for by these rules, may be made *viva voce* at any sitting of the court, if both parties be present, or upon affidavit, the opposite party having notice of such application and of the grounds thereof, and the order or decision of the judge upon such application, if made at a sitting of the court, shall be entered by the clerk as in other cases of order made; if made upon affidavit elsewhere it shall be mailed to the clerk or delivered at his office.

DISCONTINUANCE OF ACTION.

252. If the plaintiff desires to discontinue the action or matter against all or any of the parties thereto, he shall give notice thereof in writing (by post or otherwise) to the clerk and to every party as to whom he so desires to discontinue, and the party receiving such notice may apply to the judge for an order against the plaintiff for the costs incurred before the receipt of such notice.

- (a) Where, in a contested case, the defendant or other party has prepared for trial, and, before the opening of the court, the plaintiff has withdrawn or discontinued the action, so short a time before the sitting of the court that the defendant, or other party, cannot in the ordinary way be notified thereof, and without such notice the defendant bona fide and reasonably incurs expenses in procuring witnesses or in attending court, or in a contested case where a counsel fee might be ordered to be taxed, if the case had proceeded to trial, and the defendant has employed counsel or a solicitor, who has attended the court to conduct the defence for him, the judge may, in his discretion, order the plaintiff to pay such costs, or such disbursements, or counsel fee, or such portion thereof as to him may seem just.

ABATEMENT.

253. In case, owing to any cause, a sitting of the court is not held on the day appointed, and the court is not adjourned, then, unless the judge shall otherwise order, no matter or action which should have been tried or heard at such sitting, shall abate or be discontinued, but the same shall be considered to have been adjourned to the next sitting of the same court, and shall, at such sitting, be entered upon the judge's list of causes for trial.

254. Subject to rules of court, the judge of the County court, or any other judge acting for him, shall have power to sit and act at any time for the transaction of any part of the business of the Division court, or for the discharge of any duty which by any statute or otherwise was formerly required to be discharged out of, or during the regular sitting of the court.

255. Where the plaintiff's claim, or defendant's counterclaim or set-off, consists of a promissory note, or other instrument, or is on a guarantee, it shall not be necessary to copy the instrument upon which the claim is founded, but it may be set forth in particulars with reasonable certainty.

SATISFACTION OF JUDGMENT.

256. Any party to a judgment, to whom accord and satisfaction or payment of such judgment has been made, may be required by the party against whom such judgment has been rendered, to enter, or to authorise the clerk to enter satisfaction thereof, and in case of his refusal or neglect to do either, the judge may upon application therefor, order satisfaction to be entered by the clerk in the procedure book.

257. It shall be lawful for the judge, upon the application of any party to an action or matter, and upon such terms as may be just, to make any order for the detention, preservation, inspection, surveying, or measuring of any property or thing being the subject of such action or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorize any persons to enter upon or into any land or building in the possession of any party to such action or matter, and for all or any of the purposes aforesaid to authorize any samples to be taken, or any observation, plan, or model to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

258 Where an order is made for inspecting, surveying, measuring, weighing, making any experiment, or for taking any sample, or making any plan or model, by any person to be named therein, such order may include an order for the clerk or some other person to be named therein, to examine upon oath and take the deposition of the person so named as to such measure, weight or inspection, or the correctness of such survey, or the result of such experiment, or the fairness of such samples, or the accuracy of such plan or model, and such order may also empower any or either party to give the deposition so taken in evidence upon any trial or proceeding.

259. When by any contract a prima facie case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the judge may make an order for the preservation or interim custody of the subject matter of the litigation, or may order that the amount in dispute be brought into court or otherwise secured.

260. So far as applicable these rules and the forms shall extend and apply to provisional counties, provisional judicial districts, territorial districts and temporary judicial districts.

261. Regular meetings of the board, when necessary, may be held upon the call of the chairman, or of any two members of the board, and at the city of Toronto.

AFFIDAVITS AND OATHS.

262. Every affidavit, and other proceeding of the like nature, shall be divided into numbered paragraphs, and shall state concisely such matters and facts as may be necessary to truly inform the court.

263. Every affidavit shall be drawn up in the first person, stating the name of the deponent at the commencement in full, and his description and true place of abode, and shall be signed by him, and in any proceeding in the court must be entitled in the court and cause (if a cause has been commenced) stating the names in full of the parties as in the summons.

264. In every affidavit, made by two or more deponents, the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents be taken at one time by the same officer, it shall be sufficient to state that it was sworn by both (or all) of the above-named deponents.

265. All affidavits, other than those for which forms are given, shall state the deponent's sources of knowledge or what facts or circumstances deposed to are within the deponent's own knowledge, and his means of knowledge, and what facts or circumstances deposed to are believed by him, by reason of information derived from other sources than his own knowledge, and what such sources are.

266. Where an affidavit is sworn by any person, who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his

presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer ; no such affidavit shall be used in evidence or read in the absence of this certificate, unless the judge is satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

267. For ordinary affidavits in a cause, the general heading and conclusion, given in form No. 22, should be used, except where another form is provided.

268. No affidavit having in the jurat or body thereof any interlineation alteration or erasure, shall, without leave of the judge, be read or made use of, in any matter pending in the court.

269. Oaths and affirmations administered to witnesses in open court or upon any viva voce examination before the judge, and to jurors and others may be in the forms prescribed. (See Form 41.)

MARRIED WOMEN.

270. Married women are capable of suing and being sued in the Division courts, as provided in The Married Women's Property Act (R. S. O., cap. 132.)

271. In every suit against a married woman, founded on a contract made by her during marriage, there shall be inserted in the particulars of claim words to the effect following : "The defendant, A. B., is a married woman, and had separate property when she contracted the liability in question, and contracted with respect to such separate property."

272. If the summons be a special summons, properly endorsed, and the defendant does not dispute the claim or deny the allegation with respect to the separate estate, the clerk may sign final judgment, pursuant to section 109 of the Act.

273. All judgments against a married woman, in respect of liabilities incurred, whether for costs or otherwise, during marriage, shall be in the following form or to the like effect: "It is

adjudged that the plaintiff (or defendant) do recover \$ and costs against the defendant (or plaintiff), such sum and costs to be payable out of her separate property, as hereinafter mentioned, and not otherwise; and it is ordered that execution hereon be limited to the separate property of the defendant (or plaintiff), A. B., not subject to any restriction against anticipation, unless, by reason of The Married Women's Property Act, the property shall be liable to execution notwithstanding the restriction."

274. Where a judgment is recovered against a married woman in respect of a debt contracted by her before marriage, the judgment may be in the form following: "It is adjudged that the plaintiff do recover the sum of \$ and costs against the defendant, A. B., such sum and costs to be payable out of her separate property, whether subject to any restriction against anticipation or not, and not otherwise."

TRIALS AND HEARINGS.

275. In cases where the hearing is by jury the judge has the same power to non-suit as in ordinary cases.

276. It is determined and ordered that the trial of a cause shall not be considered to have been concluded, in case the giving of judgment has been postponed by the judge to a subsequent day, until the delivery thereof in writing at the clerk's office upon the day and at the hour named therefor by the judge, or orally by the judge at some sitting of the court.

LEAVE TO DISPUTE PLAINTIFF'S CLAIM.

277. The leave to dispute the claim of the plaintiff in any action, before judgment, under section 112 of the Act, may be obtained on the ex parte application of the defendant, or his solicitor, on sufficient grounds being shown by affidavit.

ACTION PENDING IN ANOTHER COURT FOR SAME CAUSE.

278. Where at the trial, it shall appear that an action for the same cause, at the suit of the same plaintiff, is pending in any other court, the judge may order the trial to stand adjourned to

a certain day, and unless before such day the action in such other court shall have been discontinued, the action may be dismissed or stayed as the judge shall determine.

INSPECTION OF PROPERTY BY JUDGE.

279. The judge by whom any action or matter may be tried may, in his discretion, inspect, or order the jury to inspect, any property or thing concerning which any question may arise therein.

ADJOURNMENT OF SUIT.

280. Where a cause is adjourned, no order of adjournment shall be served on either party, except by direction of the judge.

PUTTING OFF TRIAL.

281. Either party to an action or matter may, at any time before the hearing, and upon notice to the opposite party, apply to the judge, in writing, for an order to put off the trial on account of the absence of a material witness (whose name should be stated), or other sufficient grounds, to be disclosed on affidavit, and the judge, in granting or refusing the application, may impose such terms as to the payment of costs and otherwise as he thinks fit.

282. When a plaintiff avails himself of the provisions of section 106 of the Act, and proceeds against only one or more of the several persons jointly liable, the defendant sued may avail himself of any set-off, counterclaim or other defence to which he would be entitled, if all the persons liable were made defendants.

NEW TRIAL.

283. Application for new trial may be made *viva voce*, and determined on the day of hearing, if both parties be present; but if made when both parties are not present, it shall be in writing, and show briefly the grounds on which it is made, which grounds, if matters of fact requiring proof, shall be supported by affidavit.

- (a) A copy of the application and of every such affidavit shall be served by the party making the same on the opposite party, or his solicitor or agent, or left at his usual place of business, if within the division; or if without the division, then with the clerk, who shall, on receiving the fees and necessary postage, transmit the same forthwith to the opposite party.
- (b) The application and affidavits (if any), together with an affidavit of the service thereof, on the clerk or the opposite party (as the case may be), shall be delivered to the clerk, within fourteen days after the day of trial, to be by him, on receiving the fees and necessary postage, transmitted to the judge, with a copy of the original claim, and other papers requisite to the proper understanding of the case, in manner hereafter stated, which delivery to the clerk shall operate as a stay of proceedings until the judge's final decision on the application is communicated to the clerk, unless the judge shall otherwise order.
- (c) The clerk, after receiving such papers, shall delay for six days forwarding the same to the judge, to enable the opposite party to answer the same in writing or by affidavit, if facts stated by the applicant in his affidavit are disputed, at the end of which period, the clerk shall transmit the whole of the papers to the judge for his consideration. If the application be refused, or if the party applying shall fail to comply with the terms imposed by the judge, the proceedings in the suit shall be continued, as if no such application had been made. The judge, before deciding the same, may hear the parties on the matter of such application at the next sitting of the court, or at such other time or place as he may appoint. The decision of the judge shall be delivered to the clerk, or transmitted to him by mail, and such clerk shall notify the parties thereof, by mail, or otherwise, and if a new trial be granted, the suit shall be tried at the next sitting of the court, unless the judge shall otherwise order.

- (d) If the application be refused, or if the party applying shall fail to comply with the terms imposed by the judge, the proceedings in the suit shall be continued as if no such application had been made.
- (e) The judge may, in his discretion, make it a condition of granting a new trial, that it shall take place before a jury, whether the first trial took place before a jury or not ; but if either party required a jury to try the case, in the first instance, he shall be entitled to another jury, on depositing the necessary fees for summoning such jury ; and in such case, the order for the new trial shall direct the summoning of a jury.
- (f) Where, under the 144th section of the Act, judgment in writing is delivered at the clerk's office, application for a new trial may be made within fourteen days from the day of delivering such judgment.

284. If upon application for a new trial, the judge, instead of granting a new trial, pronounces the judgment which in his opinion ought to have been pronounced at the trial, the fact shall be noted in the procedure book, and the order for judgment shall be transmitted to the clerk.

285. It is considered and ordered (lest there be a conflict of decision or diversity of action in the exercise of the discretion with which the judge is invested under section 146), that upon an application for a new trial, the judge, instead of granting a new trial, may pronounce the judgment which, in his opinion, ought to have been pronounced by the judge who tried the case, without a jury, and that in that case only, may he order judgment to be entered accordingly ; but that he has no such discretion or authority in dealing with an application for a new trial and setting aside a verdict of a jury. This rule shall not be construed to prevent a judge upon an application for a new trial in a jury case, from ordering that a non-suit be entered, in case he shall be of opinion that he ought to have entered judgment on non-suit at the trial.

NOTICE TO PARTIES OF ADJOURNMENT OF CASE.

286. In case neither of the parties appear at the trial, the judge may either strike out the case or postpone the trial. In case of postponement, the clerk shall notify all parties by postal card of the adjournment and of the date of the sitting to which it has been adjourned.

INSPECTION OF DOCUMENTS.

287. When, in an action or matter, any party thereto is desirous of inspecting any document in which he has an interest, and which shall be in the possession, power, or control of any other party, he may, within four days from the day of the service of the summons, give notice to such other party, by prepaid and registered post letter, or otherwise, that he desires to inspect such instrument, at any place to be appointed by such other party, and being within the division in which the suit is brought, and such other party shall appoint a place accordingly ; but if he neglects or refuses to appoint such place, or to allow the party giving the notice, or his solicitor or agent, to inspect it within three days from the day of receiving such notice, the judge may, in his discretion, on the day of hearing, exclude such document from being given in evidence in such action or matter, or adjourn the cause for the purpose of such inspection, and make such order as to costs as he shall think fit.

FEES AND COSTS.

Counsel Fees.

288. Where, in a contested case for more than \$100, an agent has been employed by the successful party in the conduct of the cause or defence, the judge shall not direct a fee to be taxed, pursuant to section 208 of the Act, unless such agent is a barrister or solicitor.

289. A case shall be considered "contested"

- (1) Where a defence is put in, disputing a claim for more than \$100, and a counsel or solicitor has been retained to prosecute or defend the claim in court, at the

sittings, and the case comes down to trial, whether any actual contest is made at the court or not.

- (2) Where a defence is put in, disputing a claim for more than \$100, and a counsel or solicitor has been retained to make an application under section 111, and an order is made therein by the judge empowering the clerk to enter final judgment.
- (3) Where a defence is put in, disputing a claim for more than \$100, and a counsel or solicitor has been retained to prosecute the claim in court, and the defendant afterwards and before the opening of the court, confesses judgment, or pays or settles the claim so short a time before the sitting of the court that the plaintiff cannot in the ordinary way be notified thereof, and without such notice the counsel or solicitor so retained to prosecute the claim bona fide attends the court for that purpose.
- (4) Where a defence is put in, disputing a claim for more than \$100, and the defendant has retained a solicitor or counsel to defend the action for him in court, and the plaintiff does not appear in court to prosecute his action, or withdraws or discontinues his action so short a time before the sitting of the court that the defendant cannot in the ordinary way be notified of such withdrawal or discontinuance, and without such notice his solicitor or counsel bona fide attends the court to defend such action.

290. A counsel fee may be ordered to be taxed, in a contested case, under section 208.

- (a) Where the plaintiff's claim exceeds \$100 ;
- (b) Or, in the case of interpleader, where the money claimed, or the value of the goods or chattels claimed, or the proceeds thereof, exceed \$100 ;
- (c) Or, where, in interpleader, the damages claimed by or awarded to either party against the other party, or against the bailiff, exceed \$60.

- (d) In all other cases mentioned and referred to in sub-section (2) of section 148.
- (e) Where the defendant gives notice of set-off or counter-claim and establishes the same to an amount exceeding \$100, and judgment is given in his favor.

WITNESS FEES.

291. The clerk shall determine (subject to appeal to the judge) what number of witnesses shall be allowed on taxation of costs, the allowance for whose attendance shall be according to the scale; and before allowing disbursements to witnesses, the clerk shall be satisfied that the witnesses attended, and that the claim for fees is just, and he may, and in case of dispute, require the party whose bill of costs is being taxed to furnish an affidavit of disbursements.

292. In case of any process or paper received for service or execution from a "foreign court," the clerk so receiving the same and procuring the service or execution thereof shall, on returning the same, give a full and correct statement, in detail, of the items of all charges made for fees and disbursements in respect of such service or execution of process, and the clerk of the home court shall report to the judge of his own county any charge made by the clerk of the "foreign court" in excess of the allowance for fees made by the tariff.

STAYING PROCEEDINGS.

293. The judge may stay proceedings in a Division court in any case in which, if the action were in the High court, an order to stay might be made.

294. Proceedings may be stayed by order of the judge in an action until security shall be given to the defendant for the costs of and incidental to his defence, in a case and under circumstances which would justify such an order being made in the High court.

ALLOWANCE OF COSTS BY JUDGE.

295. Where the judge directs a fee to be taxed to the successful party under section 208, or orders any other fees or costs to be taxed, or certifies for costs in any case, or where the allowance of any particular costs under any of the sections of the Act, or any of the rules of court, or under any other statutory provision, the application therefor should be made at, or immediately after the trial or hearing, or final disposal of the cause. The judge may make such direction or order on his list, at the time of the trial, or on the back of the summons, or when the action is finally disposed of, in case of a postponed judgment.

OFFICERS' FEES.

296. The fees set forth in the tariff marked "schedule of clerks' fees" and "schedule of bailiffs' fees" shall be the fees to be received by the several clerks and bailiffs of Division courts, on and after the day that these rules shall come into force, for and in relation to the duties and services to be performed by them as officers of the said courts, and shall be in lieu of all other fees heretofore receivable for the same proceedings.

297. The clerk shall not be required to take any proceedings, unless and until the fee or fees therefor have been paid to him, as provided by section 54 of the Act.

298. In every case in which an attachment has issued against an absconding debtor, or an execution has issued against the property of a judgment debtor, and a plaintiff or defendant, judgment creditor or other person interested in the claim, judgment or execution, who would be entitled to the proceeds thereof (if the money were made in satisfaction of the attachment or execution), insists upon the bailiff making an attempt to find property, whereby mileage and expenses are to be incurred, it shall be necessary for a deposit to be made with the clerk of the amount of bailiff's fees, and, provided a proper endeavour (although unsuccessful) has been made by the bailiff after such deposit of fees, to the satisfaction of the clerk, but subject to appeal to the judge, to secure property whereon to levy, in such case he shall be entitled to such mileage.

299. Before an order may be made for issuing an execution for the payment of fees, which ought to have been paid to the clerk in the first instance, according to section 54, an application must be made to the judge, upon affidavit of the facts, and a summons must issue for the party on whose behalf the proceedings upon which fees are alleged to be unpaid were taken, to show cause why payment thereof should not be enforced by order of the judge and by execution, as provided by section 55 of the act.

POSTAGE AND REGISTRATION OF LETTERS.

300. All letters enclosing any papers in a cause sent from one division court officer to another, or to a party to a suit, or to the judge, and unless otherwise provided for in the Act or by these rules, all necessary notices sent by the clerk, shall be prepaid and registered; when papers are forwarded to the judge, postage stamps for return postage must in all cases be enclosed. The costs of postage and registration shall in all cases be costs in the cause.

APPEALS FROM DIVISION COURTS.

301. In case of an agreement not to appeal (section 116) a memorandum of such agreement, in writing, shall be prepared and shall be signed by the parties, their solicitors or agents, and be filed with the clerk before the trial is entered upon.

302. When the judge of the Court of Appeal has pronounced judgment, either party may deposit the same, or an office copy thereof, with the clerk of the Division court, and upon being so deposited the judgment must be filed, and may be enforced as if it had been made by such Division court.

303. A new trial, in pursuance of the order of the Judge of the Court of Appeal, shall be entered for trial at the Division court which shall be holden next after twelve clear days from the time when such order, or office copy thereof, shall have been deposited as aforesaid, unless the parties agree that it shall take place sooner, or the judge otherwise order, and it shall be conducted in the same manner as any new trial granted by the Division court itself.

304. If the order of the judge of the Court of Appeal be that judgment shall be entered for either party, then such judgment shall be entered accordingly, and the successful party shall be at liberty to proceed on such judgment as on a judgment of the Division Court.

APPEALS.

Under Master and Servant Act (R. S. O., cap. 139), and amendments thereto, and under the "Act to Impose a Tax on Dogs for the Protection of Sheep." (R. S. O. cap. 214.) and other Acts.

305. Appeals may be made by master or servant :

- (1) Against any conviction or order for payment of wages ;
 - (2) Against any order of dismissal from service or employment,
- or,
- (3) Against any decision of any justice under the Act. The complaint before the justice in all cases being laid by the servant.

306. The forms, Nos. 247 to 250, inclusive, shall be used and applied in proceedings on appeals to the Division court, under The Act Respecting Master and Servant (R. S. O., cap. 139, and amendments thereto), being varied where necessary to meet the particular case.

307. The said forms may also be used and applied, being varied for that purpose, in proceedings on appeals to the Division court, under "The Act to Impose a Tax on Dogs for the Protection of Sheep."

308. The said forms may also be used and applied, being varied for that purpose, in proceedings on appeals to the Division court, under The Consolidated Assessment Act, 1892, or under Acts amending the same.

309. The rules regulating the practice in appeals, under The Ditches and Watercourses Act, in so far as the same are applicable, and the practice is not provided for by the said Consolidated Assessment Act, shall govern appeals, under the said last mentioned Act.

MASTER AND SERVANT.

310. The appellant shall, before or at the time of the filing of the appeal bond, file with the clerk the notice of appeal and an affidavit of service thereof (R. S. O., cap. 139, sec. 16).

311. The clerk, shall, on the bond and the notice of appeal with an affidavit of service thereof being filed in his office, enter the cause in his procedure book.

312. The clerk may require from the sureties to the appeal bond an affidavit of justification showing their sufficiency as such sureties.

313. The clerk's approval of the bond and of the sufficiency of the sureties may be endorsed on such bond.

314. The appellant shall, at the time of the filing of the bond, furnish the clerk, in writing, with the post office address of the justice or justices against whose decision the appeal is made.

315. The clerk shall give notice, by registered letter, to such justice or justices of the filing and approval of the bond.

316. If the appellant requires the appeal to be tried with a jury, he shall, at the time of the filing of the bond, file a notice and deposit with the clerk, the proper and necessary fees.

317. If the respondent requires a jury, he shall, within four days after the service of the notice of appeal upon him, file with the clerk a notice requiring a jury, and shall at the same time deposit the proper and necessary fees.

318. The clerk and bailiff, respectively, shall be entitled to receive for their services the like fees as in suits in the court, and the same and necessary disbursements shall be paid to the clerk before any proceeding is taken.

319. The clerk may issue, under the seal of the court, subpoenas to witnesses, and the bailiff may serve the same; such subpoenas shall be in the form, as nearly as may be, of those used in suits in the Division courts.

LINE FENCES.

320. The appellant shall deliver to the clerk of the Division court a copy of the notice of appeal, with an affidavit of the service thereof, upon the fence-viewers and parties interested, and a copy of the award, certified by the clerk of the municipality.

321. The clerk shall immediately notify the judge of such appeal.

322. Upon receiving the judge's order, appointing a time and place for the hearing of the appeal, the clerk shall notify the fence-viewers and all parties interested, in the manner provided in The Line Fences Act for the service of notices.

323. If the time and place of hearing is at a sitting of the Division court, the clerk shall enter the matter on the judge's list of causes for trial at such sitting, and at the foot of the list, unless the judge shall otherwise order.

324. The clerk may issue, under the seal of the court, subpoenas to witnesses, and the bailiff may serve the same. Such subpoenas shall be in the form, as nearly as may be, of those used in suits in the Division courts.

325. The clerk and bailiff shall, respectively, be entitled to receive for services the like fees as in suits in the court, and the same and necessary disbursements shall be paid to the clerk before any proceeding is taken.

326. Rule No. 138 of these rules, as to preparation of special judgment, shall be applicable to matters under The Line Fences Act.

327. After the judge has finally determined the appeal and made his order, the clerk shall certify to the clerk of the municipality the said order, and the award as altered or confirmed, together with the costs, if any, allowed, and by whom to be paid.

328. In case a sum of money has been paid by the appellant to the clerk as an indemnity against the costs of the appeal, such clerk shall hold the same, subject to the judge's directions.

329. The forms Nos. 244 to 246, inclusive, shall be used and applied in proceedings on appeals to the judge of the County court; under The Line Fences Act. (R. S. O., cap. 219, sec. 12.) Where necessary the forms can be varied to suit the particular case.

DITCHES AND WATERCOURSES.

330. Immediately upon receiving from the clerk of the municipality the copy of the notice or notices of appeal and the certified copy of the award, the clerk shall notify the judge, of the appeal.

331. Immediately upon the receipt of the judge's order fixing the time and place of hearing the appeal, the clerk shall notify the engineer and all parties interested, in the manner provided in The Ditches and Watercourses Act for the service of notices.

332. If the time and place of hearing is at a sitting of the Division court, the clerk shall enter the matter on the judge's list of causes for trial at such sitting, and at the foot of such list, unless the judge shall otherwise order.

333. The clerk may issue, under the seal of the court, subpoenas to witnesses, and the bailiff may serve the same. Such subpoenas shall be in the form, as nearly as may be, of those used in suits in the Division courts.

334. The clerk and bailiff shall, respectively, be entitled to receive for services the like fees as in suits in the court, and the same, and necessary disbursements shall be paid to the clerk before any proceeding is taken.

335. Rule No. 138 of these rules, as to preparation of special judgment, shall be applicable to matters under The Ditches and Watercourses Act.

336. After the judge has finally determined the appeal and made his order, the clerk shall certify to the clerk of the municipality the said order, and the award as altered or confirmed, together with the costs, if any, allowed, and by whom to be paid.

337. In case a sum of money has been paid by the appellant to the clerk as an indemnity against the costs of the appeal, such clerk shall hold the same, subject to the judge's direction.

338. The forms Nos. 240 to 243, inclusive, shall be used and applied in proceedings on appeals to the judge of the County court, under The Act Respecting Ditches and Watercourses. (R. S. O., cap. 220, and amendments thereto.) Where necessary the forms can be varied so as to suit the particular case.

ALTERATIONS AND AMENDMENTS
OF
REVISED RULES

MADE BY
THE ACT TO AMEND DIVISION COURTS

(57 Vic. Cap. 23.)

ALTERATIONS AND AMENDMENTS.

Rule 73.

Under section 17 of 57 Vic. cap. 23, amending section 177 of the Act, the following addition to this rule should be read :—

If the debt is alleged or adjudged to be due by an unmarried person, having no family depending upon him for support, a statement to that effect shall be upon or annexed to the summons served on the garnishee ; and in the absence of such statement, such unmarried person may be presumed by the garnishee to have a family depending on him for support.

Rule 84.

In addition to the right of the primary creditor to have execution issued under this rule against a garnishee, and to levy for the costs and bailiff's fees, section 18 of the amending Act enacts as follows :—

In cases in which judgment shall have been recovered against a garnishee, under section 184 or 187 of the Act, such garnishee shall be liable to be examined as a judgment debtor under sections 235 to 248, inclusive, of the said Act.

Rule 134.

The sections of the Act relating to transcripts of judgment to the County court, (sections 223, 224, 225 and 226), and under which this rule was partially framed, have been repealed by section 8 of the amending Act of '94. Where an execution against goods has been returned *nulla bona*, and the sum remaining unsatisfied on the judgment under which the execution issued amounts to \$40, the party in whose favor the judgment had been entered may sue out an execution (see Schedule D to amending Act for form), against the lands of the party in default direct to the sheriff of any county in the province in which the lands are situate, and the sheriff shall act upon the same and make his return direct to the clerk of the court out of which the writ shall have been issued. Transcript to the County court has been done away with altogether.

Rule 145

Says the clerk of every Division court shall have an office at such place, within the division for which he is clerk, as the judge shall direct.

Under section 9 of the amending Act of '94 this power is taken away from the judges. The Lieutenant-Governor in Council now appoints the place where the clerk's office is to be situated.

The following is the section :—

Notwithstanding anything contained in the Act, or in any of the general rules or forms now in force, or that may at any time hereafter be in force in the

Division courts of this province, the Lieutenant-Governor in Council may designate and appoint the place within any division where the office of the clerk of such division shall be situated.

Rule 147.

The form of procedure book directed to be kept by this rule, and given in Form No. 4, has been superseded by Form, Schedule B, to section 10 of the amending Act of '94. The sub-rules as to the mode of making entries in the former have, therefore, of course, no application.

Rule 154 (a).

The form of foreign summons book (No. 10), has also been superseded by Form Schedule C. to section 10, under the heading of Foreign Procedure book.

The forms given in the schedules to the amending Act, of procedure book and foreign procedure book, are the authorized forms.

Rule 161.

Section 144 of the Act, under which this rule was framed, has been amended by section 4 of the amending Act of '94, as follows :—

By striking out all the words after the word “ judgment ” in the fourth line, and inserting in lieu thereof the words—“ until it is convenient for him to give the same, when he shall forthwith send the same to the clerk of the court, who shall, upon the

receipt thereof by him, forthwith enter the judgment and notify the parties to the suit of the same ; and such judgment shall be as effectual as if rendered in court at the trial."

This saves the costs of giving notice of a fixed day for delivering the judgment and of attendance of the parties or their solicitors.

Rule 261

Relates to the call, and holding of meetings by the Board of County Judges, under section 298 of the Act.

This section is amended by the addition of sub-section 5, which enacts that the inspector of Division courts for the time being shall be a member of said board. Under this amendment, the inspector would, of course, have to be notified of the meetings.

Absconding Debtors.

The proceeding under the section of the Act (249), respecting Absconding Debtors, is of rather a summary character.

By sec. 70, sub-section 2, the increased jurisdiction conferred by paragraph (c) of that section is extended to proceedings against absconding debtors.

The section originally read :—In case a person being indebted in a sum not exceeding \$100, nor less than \$4, for any debt or damages arising upon a contract, expressed or implied, or upon a judgment.

By sec. 70 (*c*) the jurisdiction is increased to \$200 on all claims for the recovery of a debt or money demand, the amount or balance of which does not exceed that amount, and where it is ascertained by the signature of the defendant, or of the person whom, as executor or administrator, the defendant represents.

By sub-section 2—in the class of cases provided for by paragraph (*c*), the increased jurisdiction thereby conferred shall apply to claims and proceedings against absconding debtors, and in such cases the attachment may issue, and proceedings may be had, on a claim of not less than \$4, or more than \$200.

If the debtor absconds from the province, leaving personal property liable to seizure under execution for debt, in any county in Ontario ; if he attempts to remove such personal property, either out of Ontario or from one county to another therein ; keeps concealed to avoid service of process—and in case any creditor of such person, his servant or agent, makes and produces an affidavit or affirmation to the purport or form prescribed by the General Rules, and the same be filed with the clerk of any Division court, then the clerk, upon the application of the party filing same, shall issue a warrant under his hand and seal, in the prescribed form, directed to the bailiff of the court within whose division the same is issued, or to a constable of the county, to seize all the personal estate and effects of the absconding, removing or concealed person within the county, liable to seizure under execution for debt, or a sufficient portion thereof to secure the sum mentioned in

the warrant, with the costs, and return the warrant forthwith to the court out of which the same issued.

To abscond is to depart to defraud creditors, or to avoid service of process. Proceedings cannot be taken until after the maturity of the debt.

Leaving a place, requesting that false information of the person's movements be given, is held to be concealment.

A warrant of attachment may be issued by a justice of the peace, and when this is the case, it should be returned to the clerk of the court within whose division the affidavit was made.

Miscellaneous Notes.

Giving Credit for Fees.—If a clerk gives credit for fees, he trusts to the promise of the party, and waives the benefit of sec. 54, which requires payment in advance.

Where a clerk has a current account with a suitor, or where the same person has several cases in court, and gets credit for fees, the clerk would be entitled, out of moneys coming into his hands, belonging to such suitor, to deduct fees due him in other causes.

Revision of Taxation.—The proper practice is for the party dissatisfied to give notice to the opposite party, and to the clerk of the court, of his intention to have the judge revise the taxation on a certain day and hour. Of course the judge could revise on summons or appointment made by him.

Settlement Before Service.—No fee can be charged or allowed where case is settled before service of summons.

Accepting Cheques.—A clerk accepting cheque on private bankers, and giving receipts for moneys, is liable through bankers failing.

Expenses of Court Accommodation.—Where a municipality, not being a town or city, furnishes a court room and accommodation, or pays for the use of any building, it shall be entitled to receive from any other municipality, wholly or partly within the division, a reasonable share of the cost. The judge may order and apportion the amount. Sec. 10, sub-sec. 3.

Collecting Interest.—Clerks should carefully make up and add interest. Interest is to be charged up to date of payment of debt, and should be collected by the bailiff. Clerks should not overlook any neglect of their bailiffs in this respect.

Notice of Altering Limits.—Proclamation and notice of the intention to alter or rescind are prerequisites of the action of the County Board. The notice should be made as public as possible, so as to give all parties affected an opportunity of being present. A notice in the newspapers commends itself for this purpose, and may be ordered by the judge, to be given by the clerk of the peace. It is the duty of the latter to make a record of the notice, and of what has been done thereunder, and to furnish the inspector with a copy of the proceedings.

Agent or Counsel Fee.—Section 120 gives the right to “*any person* to appear at the trial as agent and advocate.”

Section 208 declares that, where, in a case, a counsel, solicitor or *agent* has been employed, the judge may, in his discretion, direct a fee of \$5—to be increased to \$10—to be allowed to be taxed to the successful party.

The fee here given is not confined to a counsel or solicitor, but may be allowed an “agent” as well. Yet by Rule 288, it will be seen, the judge shall not direct a fee to be taxed, pursuant to sec. 208, “unless such agent is a barrister or solicitor.”

Whether the Board of County Judges had the power to make this change or not, may be questioned. One thing is certain, however, that it will have the effect of cutting off the allowance of this fee to agents, who are not barristers or solicitors.

Duty of Bailiff.—An arrangement should be made by a bailiff for regular attendance at the clerk’s office to receive summonses and papers. The copies for service should be carefully compared with the originals. Clerks should assist bailiffs of their courts in seeing to this.

Bailiff’s Fees.—Sec. 56, directing that the bailiff’s fees be paid to the clerk before the issue of execution is for the protection of the bailiff. What the bailiff’s fees may be is a matter of uncertainty. If he finds nothing to seize, there may be no fees payable—mileage in such case not being allowed—except

under Rule 298. But where parties settle, after seizure, to the prejudice of the bailiff, the latter is protected.

Enquiry by Inspector.—On enquiry into complaints against officers, the inspector has extended powers. He has all the powers of a court in civil cases to enforce the attendance of witnesses, and compel the production of documents. Should the officer charged desire that any person be summoned in his interest, the inspector will grant him subpoenas for that purpose.

Injunction.—Cases where injunctions may be granted are—against waste, trespass, nuisance, and breach of contract, and also suits against executors, clubs and societies—where some wrongful act has been, or is about to be, committed by them, which would prejudicially affect some right in respect of which suit has been brought in the Division court. Where there is a legal right, capable of being enforced, the court may interfere in protection of that right. The remedy for breach of injunction is by attachment for contempt. The new rules are silent upon this important branch of proceedings.

Commissions.—The rules of the Supreme Court of Judicature apply to all commissions out of the Division courts. Formerly the commission was returned to the clerk of the County court, and costs were taxed on the County court scale; now returns are made direct to the clerk of the Division court, and the costs are in the discretion of the judge.

Clerks and Bailiffs.—Were appointed by the judges up to March, 1880. They had also express power of removal. Now a judge may remove only a clerk or bailiff within his own county who was originally appointed by a judge, and cannot do more than suspend an officer appointed by the government.

Clerks cannot practice as barristers or solicitors ; nor can the deputies appointed by them be such. When applying for leave of absence, and giving name of deputy, this should be remembered.

Leave of Absence.—In case of illness or unavoidable accident, the clerk may, with the approval of the judge, appoint a deputy to act for him. The inspector may grant leave of absence for whatever cause he may see fit, and may approve or disapprove, at pleasure, of any person that the clerk appoints.

The appointment can only be made by a bailiff where he is temporarily unable to perform the duties from illness, leave of absence, or temporary disability, with the approval of the inspector. Clerks and bailiffs and their sureties are liable for the acts of deputies.

A clerk and his sureties are bound for the lawful fees of a bailiff. The statement of account between the plaintiff and the officer is binding on the sureties. Where an action is brought for damages against an officer of the court, damage must be proved, as a general rule, and is the essence of the action. But for non-performance of some duties, nominal damages may be given. By the express terms of the

covenant, damage is of the essence of an action for misconduct.

The misconduct must be in the exercise of the duties of his office. The exaction of illegal fees ; selling a debtor's goods contrary to the orders of a creditor ; assuming to do more than the process justified, as by breaking open the door of a dwelling ; making false return of process ; all come under the general head of misconduct.

Wherever by the Act or Rules a duty is imposed upon a clerk or bailiff, and he neglects it, and the person to whom he owes the duty is damaged, without any want of care upon his part, the sureties will be liable.

Process Must Not be Delayed.—Once acted upon, process of the court cannot be delayed until fees are paid.

Protection of Officers.—A clerk issuing a warrant under the seal of the court, and a bailiff and his assistant acting thereunder, are protected—even assuming that the judge has no jurisdiction to make the order on which the warrant is founded.

Service out of Division.—If a bailiff intends to refuse to serve or execute any process out of his division, he should notify the clerk immediately, and refuse to receive the writ. If he receives it with the intention of acting he is responsible for its execution. He has no right in any other county, except the case falls within sec. 82—under which action may be brought in court nearest to defendant's residence.

He may, however, effect service in another county, but cannot charge mileage for any distance travelled beyond his own county.

Return Within Six Days.—When a bailiff forfeits his fees, if return not made within six days after service, the day of service is not to be included.

Judgment.—The decision of the judge, if not pronounced in court, only becomes a judgment when duly entered in the procedure book by the clerk. When receiving a postponed judgment, under sec. 144 (as amended), clerks should bear this in mind, and forthwith make the necessary entry.

Deputy Judge.—A deputy judge cannot give judgment after the expiration of the period for which he was appointed. Neither is he a justice of the peace, as the senior and junior judges are, for every county and part of a county.

The death of the judge ends the authority of the deputy.

Solicitor's Lien.—A set-off will not be allowed to the prejudice of a solicitor's lien for costs.

A solicitor, by whose efforts judgment has been recovered, has a lien thereon for the costs of the action in which it was recovered. Such lien will take priority over a garnishee summons issued at the instance of a creditor of the client.

Judgment Over Twenty Years Old.—An action is not maintainable upon a judgment over twenty years old, without a payment or acknowledgment in the

meantime. If execution has issued on a judgment within six years, there is no necessity for a revival within twenty years.

New Clerk or Bailiff.—A newly appointed clerk or bailiff must be particular to do no official act until the covenant of himself and sureties is approved and filed.

Transcript.—Prior to the change in the law—making the transcript a judgment of the court to which it is sent, and staying all further proceedings in the court of issue—notice of return was necessary. Now there is no such notice to be given, nor can it be charged for. If money be paid, the notice sent to the party entitled to receive it suffices. In case of a *nulla bona* return, notice is given the plaintiff, or to the clerk who issued transcript, as the case may be. This notice must be prepaid and registered, and the certificate of registration filed.

The entries of proceedings on a transcript may be made in the procedure book of the court to which it has been sent, in the form of an ordinary suit. The procedure book shall for that purpose be the transcript of judgment book required by the Act.

Replevin.—The value of property recoverable in replevin has been extended to \$60—formerly it was limited to \$40. The court has no jurisdiction where the title to lands is brought in question.

Under section 2 of the Replevin Act, where goods or chattels are wrongfully taken, the owner may bring an action of replevin for recovery of the pro-

perty detained, and for damages sustained by the unlawful seizure and detention.

Section 3 prohibits any party to an action in any court from making replevin.

In actions of replevin no other cause of action shall be joined in the summons. Rule 41.

The action may be brought in the court of the division within which the defendant, or one of the defendants, resides or carries on business, or where the goods have been taken.

Rule 43 sets forth the conditions under which writ may issue.

Rule 47 provides for the bailiff's taking a bond for treble the value of the property.

Examination of Garnishee.—A garnishee may now be examined as a judgment debtor. 57 Vic., cap. 23, s. 18.

Not a Party.—A garnishee is not a party to a cause. The garnishee proceedings are grafted on the cause, and are merely attached thereto.

Warrants of Commitment continue in force six months from date. Rule 203. A warrant may be renewed for a further period, not exceeding six months.

New Trial.—Application for a new trial must be made according to Rule 283, and care should be taken in observing the requirements of that rule.

The following are grounds for granting a new trial :—

Improper admission or rejection of evidence.

Improper non-suiting of plaintiff.

Misdirection or non-direction of the jury.

Perverse verdict, or verdict against the weight of evidence.

Verdict too small or too great.

Surprise and discovery of new evidence.

The judge, of course, also has power to grant a new trial, upon the ground that his judgment was wrong either in law or fact, upon the evidence before him.

Appeal.—An appeal lies from either the granting or refusal of a new trial.

There is no appeal direct from the judge's decision on the trial of a cause, but only after he has decided an application for a new trial.

The application for stay of proceedings should be made by the party proposing to appeal.

Payment Into Court.—Payment to clerk will amount to payment into court.

Arbitration.—Parties cannot be compelled to arbitrate. When ordered, the consent of the parties is necessary. The judge may impose terms. Trustees and executors may submit.

If the costs are to abide the event, the arbitrator cannot make any disposition of them.

The arbitrator may retain the award until his fees are paid.

County Judge.—A county judge is not answerable in an action of trespass for an erroneous judgment, or for the wrongful act of his officers ; but he is responsible for an act done by his command when he has no jurisdiction.

As regards judges and judicial officers, the general rule is, that if they do an act beyond the limit of their authority, causing injury to another, they are liable for it. But, if done within that limit, through an erroneous or mistaken judgment, they are not liable.

Residence of Judge.—A judge or junior judge must reside in the county in which he is such.

Postage.—Stamps for return postage must now be enclosed by parties asking information from officers of the court. Heretofore clerks were compelled to answer by postal card, where no stamps had been received. Now they are not obliged to answer unless they get stamps for return postage.

Covenants.—Officers of the court should particularly heed the warning, that the office becomes forfeited, where they fail to renew covenant, within a month after notification. When that occurs, a new appointment has to be made.

Mode of Making a Tender.—Strictly speaking, a tender to be legal should be made in legal coin.

Up to \$10, it may be made in silver, and to 25 cents, in coppers.

Bank notes are a good tender, if not objected to. So is a tender made in the form of a cheque, when no objection is made. A tender is not good where the money is not produced.

A plaintiff may be non-suited after plea of tender, if he does not appear. Notice of the plea and payment should be at once communicated by the clerk to the plaintiff.

Money in Court.—The plaintiff cannot get money paid into court, until the suit in which it is paid is determined, unless the judge otherwise orders.

Statute of Limitations.—The statute commences to run when the right to bring an action has accrued, and stops on the issue of the summons, and during its currency.

In all ordinary cases, of account, promissory note and mercantile transactions, etc., suit shall be commenced within six years.

Actions for rent upon an indenture of demise, actions upon a bond or other specialty, or upon a recognizance, must be commenced within twenty years.

Action upon an award, when submission is not by specialty, for an escape, for money levied on execution, within six years.

Actions for penalty, damages, or sums of money given to the party aggrieved by any statute, within two years.

Actions for rent, which term is made to include all annuities and periodical sums of money charged

upon or payable out of land, and actions for the recovery of land or rent, within ten years.

Returns.—Rule 176 is a repetition of Rule 147 (*f*), as to returns of fees to inspector.

Entering Judgment.—Where there is no defence, the clerk, after receiving return of special summons, may enter judgment on the *twelfth* day after the day of service, where the return day is the eleventh, and on the *seventeenth* day, where the sixteenth day after the day of service is the return day. This is according to Rule 117.

Part of Claim.—Judgment for part of claim, not disputed, will not be a bar for recovery of the remainder.

Suits by Minors.—In suing for anything but wages, a minor must procure the attendance of a next friend at the office of the clerk of the court, at the time of entering the suit, who must undertake to be responsible for costs. A minor has six years to bring an action after attaining his majority.

Splitting Causes of Action.—Prohibition will be granted when a party splits the cause of action, to bring it within the jurisdiction.

Executing Writ.—If an execution is to be executed by any other person than the bailiff of the division out of which it issues, the safer practice would be to have the judge's or clerk's order endorsed on the

writ. The return must be made to the clerk who issues the writ.

Debt or Money Demand.—The words are defined as any claim, legal or equitable, on contract, expressed or implied, on which a certain sum of money, not being liquidated damages, is due and payable. An action for a debt not due would not come under these provisions.

A Married Woman can be a surety for an officer of the court, provided she possesses sufficient estate. Married women are not liable to commitment on judgment summons. They may sue and be sued. A married woman may sue her husband for loans made him after marriage.

Claim Less than \$15.—Should a summons for a claim less than \$15 not be personally served, a plaintiff would have to prove his claim to entitle him to judgment.

Execution.—Execution may be issued on a judgment by default, on a specially endorsed summons, immediately after the entry of the judgment; but in other cases, unless the judge otherwise orders, the execution shall not issue until fifteen days after the entry of the judgment.

The terms "*feri facias*" and "warrant of execution," used in the Division court, are convertible terms.

Poundage.—Bailiff's fees, when goods in his possession are taken by sheriff, will not include poundage.

Powers of Judge.—Extensive discretionary powers are given the judges under the Act, and are very much enlarged upon in the new rules. "Unless the judge otherwise orders," is a proviso contained in most of them. To the credit of the Bench, it must be said that these powers are, in the main, exercised judiciously.

Commission to Examine.—No form is given in the authorized forms published with the general rules. The provisions of the general rules of the Supreme Court of Judicature, as far as the same are applicable, shall apply to every commission issued under the Act. A form of Commission is supplied in the forms of the general rules of practice of the S. C. J., No. 118, p. 225.

Formerly the commission was returned to the County court, and the costs were taxed on the County court scale.

Now the commission, with the evidence taken thereunder, and the papers are to be returned to the clerk of the Division court in which the action is pending, and the costs are in the discretion of the judge, who may allow a gross sum therefor.

DIVISION COURTS DEPARTMENT.

The department for the inspection of Division courts is located at Toronto, in the east wing of the Parliament buildings, and is a branch of the department of the Hon. the Provincial Secretary. Mr. Joseph Dickey, the inspector, has acceptably filled the office since 1873. Mr. J. Bruce Macdonald and W. H. Higgins are the clerks. As will be seen from the lists given in preceding pages of this work, the officers of the courts under the department number 671 321 clerks and 350 bailiffs. From each of these, periodical returns are required, from which the figures giving the mass of information contained in the annual reports are tabulated and compiled. Some idea of the other duties and requirements of Division court inspection, besides the preparation of this annual report, and filing away returns, may be arrived at from the following facts and figures.

The 321 offices of courts, scattered over the counties of the province and its remote districts, have to be visited. All complaints against officers have to be enquired into ; and they numbered last year 237 complaints against clerks and 261 complaints against bailiffs. The principal causes of

complaint appear to be neglect of duty, misconduct, withholding suitors' money, making charges outside the tariff, and many irregularities of a minor character.

The changes that are daily taking place, through deaths, removals, resignations of officers and their sureties; the filling up of vacancies and new appointments; looking after the covenants in each case; considering constant applications for leave of absence and appointments of suitable deputies, and the making out, dispatching and receiving of the necessary papers, and the keeping an exact record in each and all of these matters must involve an immense amount of clerical work that requires intelligent training in its performance. The daily correspondence is a heavy budget. The three thousand letters, or thereabouts, that have to be written in the course of a year, in reply to those received from clerks and bailiffs asking for information and direction in all sorts of puzzling circumstances, and in answer to suitors and their attorneys, require more than ordinary industry and intelligence, for of course the writer must be "posted" on every subject, and must be able to refer to the section of the Act and the rule bearing upon each particular case.

But it is the following information that will be a surprise to most people, and from which one will be better able to appreciate the growing importance of the Division courts of the province.

In a given year there were reported entered in the Superior courts of Ontario, 7,041 cases. The

number of judgments obtained was 2,423, for a total of \$2,500,000.

In the County courts there were 3,800 actions reported as entered, for the same period, and the total amount for which judgment was entered, before and after trial, was \$453,408.

In the Division courts, for the same year, the returns shew as entered 63,054 suits (exclusive of transcripts of judgments and judgment summonses), and the total amount to be \$2,447,196.

This will be an unexpected disclosure of the relative importance of the business of the Division courts and the other courts of the province.

And many will also be surprised to learn, that instead of being, as popularly supposed, a bill of expense, the inspection is actually the source of a very nice little revenue to the provincial treasury. The total amount collected in ten years foots up \$72,589.11.

Here are the official figures :—

1884.....\$4,381 23	1889.....\$8,628 21
1885..... 6,484 19	1890..... 9,097 88
1886..... 6,253 30	1891..... 7,571 39
1887..... 7,465 14	1892..... 6,865 06
1888..... 9,392 14	1893..... 6,450 57

Total, \$72,589.11, or an average of over \$7,200 a year.

The salaries are :—

Mr. Dickey, inspector.....	\$1,800 00
Mr. Macdonald, clerk.....	1,000 00
Mr. Higgins, clerk.....	1,000 00
	\$3,800 00

Contrasted with the salaries and fees paid at Osgoode Hall, or to officers of County courts, for, we will not say less intelligent work, the balance is as much in favor of the Division Courts Department in this respect, as it is in a comparison of the fees allowed to be charged.

PART II.

INDEX TO RULES.

INDEX TO RULES.

The figure of reference is to the number of the rule.

	RULE.
ABANDONMENT OF EXCESS	7
Must be done in first instance.	
Judge may permit, before judgment.	
ABATEMENT.....	223
Action not abated by death, marriage or insolvency.	
Nor by devolution of any estate.	
Nor by the death of either party, between the verdict or finding and the judgment.	
Nor if Court not held on the day appointed.....	253
ABODE (<i>see residence</i>).	
Place to be stated in claim.....	7
ALIAS OR PLURIES PROCESS—shall be dated on day of issue.....	12
ADDING PARTIES	208
Condition of granting order.	
ACTION—Pending not affected by rules	1
AGAINST OFFICERS of Court	6
Where excess abandoned.....	7
Commencement of.....	9
Leave to bring under 83rd sec.....	14
Where defts. have separate and not joint interests.....	19
Leave to be granted by judge before whom tried	22
FOR FLOODING lands.....	23
Order may be made for sale of perishable goods in any.	36
In Garnishee proceedings.....	68
When goods replevable.....	39, 40, 41, 42, 43
(<i>See also Replevin</i>).	
May be adjourned to enable deft. to give notice of defence, etc.	115
Settlement of to be made with clerk.....	198
When may be proceeded with if stay removed.....	245
Compensation in action of detinue.....	246
Discontinuance of.....	252
Pending in another court for same cause.....	278
ABSCONDING DEBTORS.....	27
Hearing or trial—	
Not to take place until a month after seizure—unless deft. personally served.	
When several warrants issued.....	28
Attaching creditors may defend action—And call witnesses—file set-off, etc.	

ABSCONDING DEBTORS—(*Continued*).

RULE

Duty of clerk before issuing writ.....	29
To see that amount and cause of indebtedness properly set forth.	
Where several judgments.....	30
But one execution to issue.	
Seizure and sale—If previously sold as perishable.	
Proceeds to be distributed rateably.....	31
Surplus, if any.	
Costs of execution.....	(a) 31
List to be prepared by clerk.....	(b) 31
Parties dissatisfied may apply to judge.....	(c) 31
Notice to each creditor required.....	(d) 31
List may be examined at clerk's office.	
Shall be binding after ten days.	

ABSENT PARTIES.....

May be added at hearing.

ACT—Meaning of the word.....(1) 2

ADMISSION by deft. of portion of claim..... 101

Proceedings thereafter.....(a) 101

Deft or plt. at liberty to give notice of admission..... 103

After notice plt. or deft. not allowed expense subsequently incurred..... 103

ACCOUNT—to be served with summons and particulars..... 17

AMENDMENTS—Of claim as to name and description..... 3

Of statement of particulars..... 4

In case of special and ordinary summons..... 26

Where action commenced in name of wrong person as plt. 207

Where a wrong party as deft. primary debtor, or garnishee is sued, and it is desired to add a party under Sec. 108..... 208

Condition of granting order—

If made at trial..... 209

Where defts. not served, struck out..... 210

Application to be made to judge before, or at trial..... 211

Where deft. improperly added to give jurisdiction..... 212

When a person other than the deft. appears at the hearing and admits..... 213

Where a party sues or is sued in his representative character, and ought to have been sued in his own right..... 214

Where a party is sued in his own right instead of his representative character..... 215

Proceedings on misjoinder or non-joinder..... 216

Where name of omitted person ought to be added..... 217

Where description of pltff. is insufficient..... 218

Where description of deft. is insufficient or incorrect..... 219

Where husband or wife improperly joined or omitted..... 220

Where deft. is added or substituted (except under R. 213)..... 221

Where a person brought in does not appear at hearing..... 222

Where change of interest before judgment..... 224

Party to whom interest shall have come to give notice—

Clerk shall give notice.

Substitution of deft. 225

Change of parties or new capacity..... 226

AMENDMENTS— (<i>Continued</i>).	RULE.
Notice of order therefor	227
Person under disability and having a guardian may apply to vary order	228
Person under disability and without a guardian	229
Where plfff. or deflt. dies, and person entitled to proceed fails to appear at trial	230
Procedure book to show changes.	231
Judge may at any time amend defects.....	239
ATTACHMENT— Hearing or trial of.....	27
Unless deflt. personally served hearing shall not take place until a month after seizure.....	27
Clerks' and bailiffs' duties as to seizure, sale, etc.....	29, 30
Mode of distribution of money made.....	31
AGENT— For the purpose of section 101, what the word "agent" shall include :—(a) in the case of a railway company. (b) in the case of a telegraph company. (c) in the case of an express company	(22) 2
Service of summons on agent of corporation or firm.....	21
Where money is received in a suit entered by.....	165
Clerk or bailiff cannot act by himself or partner as.....	197
Where unable to effect personal service on a deflt. having an agent in the province.....	20
ATTACHING CREDITOR— may enter defence, etc.....	28
When defendant.....	31
ATTACHMENTS OF DEETS in garnishee proceedings.....	68
Proceedings to be entered in procedure book	88
AFFIDAVIT— (<i>See also Oaths</i>) to substitute service.....	20
Before issuing attachment.....	29
Necessary for writ of replevin.....	43
To substitute service of writ of.....	57
To ground application in garnishee proceedings.....	68
Of execution of award.....	126
For judgment summons	200
For renewal of warrant of commitment.....	203
Shall be divided into numbered paragraphs.....	262
Shall be drawn up in the first person, giving name and residence, etc., of deponent	263
When made by two or more deponents.....	264
What they shall state.....	265
Where deponent illiterate or blind.....	266
General heading and conclusion.....	267
Interlineations or erasures.....	266
Disbursements by witnesses	281
AFFIRMATIONS— (<i>See Affidavits</i>).	
APPEALS— In case of an agreement not to appeal.....	301
When Court of Appeal has pronounced judgment.....	302
To be filed with the clerk—	
How enforced—	
When new trial ordered by judge of Court of Appeal.....	303
Proceedings thereunder—	
If order be that judgment be entered for either party.....	304

APPEALS—(Continued).

RULE.

UNDER MASTER AND SERVANT ACT—may be made by either master or servant.....	305
(1) Against conviction—	
(2) Against any order of dismissal from service—	
(3) Against decision of any justice—	
Forms to be used	306
Notice of appeal and affidavit	310
When clerk shall enter cause	311
May require affidavit of justification	312
Approval to be endorsed on bond	313
Post office address of justices against whose decision appeal made to be furnished.....	314
Notice to be given them	315
If a jury required	316, 317
Fees to be received for services by clerk and bailiff	318
Subpoenas to witnesses.....	319
DOGS AND SHEEP—Forms to be used in appeals under the act to impose a tax on dogs for the protection of sheep	307
ASSESSMENT ACT—Forms to be used on appeals under The Consolidated Assessment Act, 1892.....	308
DITCHES AND WATERCOURSES—The rules regulating the practice in appeals.....	309
LINE FENCES—Copy of notice of appeal with affidavit of service on fence-viewers to be delivered to clerk	320
Notice to judge.....	321
Notice to fence-viewers.....	322
When to be entered on list of judge's causes.....	323
Subpoenas to witnesses	324
Fees to be received by clerk and bailiff.....	325
Rule 138 as to preparation of special judgment applicable.....	326
Certificate of judge's order and award to clerk of the muni- cipality	327
Indemnity for costs.....	328
Forms to be used.....	329
DITCHES AND WATERCOURSES—Notice of appeal and certi- fied copy of award to be given clerk	330
Notice to judge.....	331
Notice to engineer and parties.....	332
When to be entered on judge's list.	333
Subpoenas	334
Fees for services of clerk and bailiff.....	335
As to preparation of special judgment.....	336
Certificate to clerk of municipality of judge's order....	337
Indemnity against costs.....	338
Forms to be used	

APPLICATIONS—Any party interested may apply to judge to correct

distribution	(c) 31
Of officer charged with execution of interpleader summons..	32
For execution by party entitled	140
For new trial.....	172
Under section 195.....	81
For judgment summons.....	51
Summary may be made on notice or by summons.....	249

APPLICATIONS—(<i>Continued</i>).	RULE.
To set aside or stay any proceedings	251
May be made <i>viva voce</i> by deft. for leave to dispute.....	251
To be entered by clerk	251
May be made <i>ex parte</i> by deft. for leave to dispute plttf.'s claim, under sec. 112.....	277
In garnishee proceedings.....	68
When made for order in replevin	44
ASSESSMENT Act—Appeals thereunder.	308
ADDRESS of parties.	
To be left with clerk	241
ADJACENT division, Leave to sue in	22
ADJOINING division.....	22
AWARD—Judgment to be entered on forthwith.....	126
Affidavit of execution of	126
ADMINISTRATORS—(<i>See proceedings against executors and administrators</i>)	89
ASSETS in future—Party entitled to execution on judgment.....(c)	140
ADJOURNMENT—(<i>See Postponement.</i>)	
Where party dies and person entitled fails to appear.....	230
Where practice not complied with	250
Where action at suit of same plttf. is pending in another Court.....	278
Where cause is adjourned, no order of shall be served.....	280
Where neither of the parties appear at trial.....	286
Parties to be notified of.....	286
BAILIFF—Service of summons by.....	16
When summons should be served	16
Where amount levied by him on sale of absconding debtor's goods	(a) 31
Interpleader summons to issue on his application.....	32
Costs allowed him, where claim under interpleader dismissed	35
Where claimant or creditor claims damages against.....(a) (b) (c)	
Interpleader summons shall be issued to him by clerk(d)	35
His duty to notify as to incumbrance when seizure made....(f)	
On party who issued process refusing to indemnify, or make deposit, bailiff may abandon seizure—	
Before acting on writ of replevin.....	47
Shall take bond—	
Bond shall be assignable to defendant.	
Duties in replevin proceedings.....	49-56
May break open house to levy on concealed property, after demand	51
May search and examine the person for the purpose of levying on concealed property.....	52
Shall return writ before return day	53
What shall be transmitted annexed thereto—	
Return of property <i>eloigned</i>	54
Before executing, bailiff take security.	
Copy of writ to be served on deft.	55
How it may be served—	
Copy shall not be served until bailiff has replevied	56

BAILIFF—(*Continued*).

	RULE.
Substitutional service may be allowed.....	57
Shall keep a separate fee book.....(e)	147
Shall make yearly return to inspector.....(f)	147
To promptly serve summons.....	183
And make return of service—	
Where summons has not been served—	
Return to be made.	
To attend every sittings of Court.....	184
To see that suitable accommodation provided—	
To make the necessary proclamations—	
Preserve order and call witnesses, etc.	
To keep bailiff's process book.....	185
To enter therein all warrants and executions—	
And what he shall have done thereunder.	
Must return execution within 30 days.....(a)	185
Report to clerk if unable to sell—	
If execution not renewed—	
If returned, property on hand for want of buyers—	
All money to be paid over to clerk.	
Shall pay over all money on receipt thereof to clerk.....	186
For neglect or failure to do so shall forfeit office.	
On executing warrant of commitment.....	187
Deliver warrant to gaoler, with fees endorsed.	
Duty on receiving an execution.....	188
To endorse exact time when received—	
In addition to formal return—to give particulars of charges and disbursements.	
To keep cash book and enter all moneys received by him...	189
To deliver to the clerk statement, on oath, of all warrants and executions in his hands.....	193
Where summons not served in time to make notice of sittings of Court available.....	190
When summons sent to a foreign Court.....	191
If proceedings hindered or delayed by him.....	195
Not to be concerned in purchase or have personal interest in suit.....	196
Not to be engaged as agent by himself or partner in conduct of suit.....	197
Settlement by debt. must be made with clerk of Court in which suit entered.....	198
No right to receive money from debt. or party in cause, either in settlement or on account.....	199
Exceptions to this rule.....	199
To give receipt for payment of amount on arrest.....	209
To endorse amount on warrant—	
To discharge debt.	
To use forms authorized by rules.....	242
Fees to be taken.....	296
When entitled to mileage if unsuccessful in finding property	298
Fees for services under Master and Servant Act.....	319
To serve subpoenas on witnesses under Master and Servant Act.....	319
Fees for services under Line Fences Act.....	325
To serve subpoenas under Line Fences Act.....	324
To serve subpoenas under Ditches and Watercourses Act...	333
Fees for services.....	334

	RULE.
BENEFICIAL Plaintiff—Warning on summons under 229th sec	31
BOND—For property taken in replevin	44
Before acting bailiff shall take in treble the value.	47
If bond delivered up to be cancelled.	62
Assignable to debt.	47
Shall be subject to sec. 8, c. 11, 8 and 9, Wm. III.	48
To be executed by primary creditor, under sec. 196.	82
In appeal under Master and Servant Act.	310
BOOKS—To be kept by clerk.	146
By clerk of Court for city, or part of city.	(h) 147
To be kept by bailiff.	(e) 147
Entries, how to be made.	(d) 147
Bailiff's cash book.	189
Judgment debtor's book	201
Only those authorized to be used	243
Except where otherwise provided by statute	243
BOARD of County Judges—Regular meetings of.	261
CLAIM AND PARTICULARS—Meaning of word "claim"	(14) 2
Should show names and addresses in full.	3
Must be legible and delivered at the clerks's office.	3
(This rule is subject to the provisions of this Act in case of co-partners)—	
Particulars required.	4
In suits under 82 sec	5
In actions against clerks and bailiffs.	6
Where excess is abandoned.	7
Must be numbered to correspond with process.	8
Claim in interpleader suit.	33, 34
Where dismissed.	35
Claim in replevin	46
By or against executors.	(c) 100
In garnishee proceedings	73
To be numbered and show standing of suit.	148
Claims against husband and wife	232
Claim, where a promissory note	255
COMMENCEMENT OF ACTION	8
CONCURRENT SUMMONS.	15
Where more debts, than one—in different counties—	
Costs of—	
Requisites of—	
CREDITORS—Time within which to file objection to list of distribution under attachment.	(d) 31
Where claimant to goods claims damages from.	(a) 35
CREDITORS' RELIEF ACT—Proceedings under.	133
CORPORATION—service of summons on.	21
CLERK—To receive claim.	3
To sign process and number to correspond with claim.	8
To issue alias and pluries	12
To sign notice required by sec. 98, on summons for flooding lands	24

CLERK—(Continued).

	RULE.
To mark date of renewal of writ	(b) 25
On issuing attachment	29
To see to statement in affidavit for attachment.....	29
To distribute proceeds rateably.....	31
To make out a list of creditors and amount due each—	
To notify all creditors of list—	
To retain moneys paid into court in interpleader suit until adjudicated upon.....	33
Shall issue interpleader summons on application of bailiff... (d)	35
To issue writ of withernam	54
To give notice of payment into court to primary creditor... (a)	80
To take bond from primary creditor.....	82
May assign same to garnishee.....	83
To enter attaching order, garnishee summons, etc., in debt, attachment book	85
To send copies of defence to parties..... (b)	86
To notify garnishee whether primary creditor admits or accepts..... (d)	
To enter all garnishee proceedings in procedure book.....	88
Requisites of notice to parties in garnishee suits, before trial	168
To give notice of dispute.....	101
To notify ptff. where part of claim admitted..... (a)	101
To give notice of counter-claim or set-off.....	115
Shall prepare all special judgments or orders.....	138
To have office within division.....	145
To make the necessary entries in books.....	146
Books required to be kept by him—	
Shall make return to inspector—	
Of city or part of city to keep separate book of fees..... (g)	147
Return of business to be made to Lieut.-Governor—	
Shall number every claim in order received.....	148
Where proceeding by special summons is warranted it must be adopted.....	149
Where ptff. orders an ordinary summons..... (a)	149
Shall annex copy of claim to every summons.....	150
Shall enter full amount of moneys returned by bailiff.....	151
Shall keep papers in cause together in original summons.....	152
Original summons, how printed.....	
Required to answer all letters promptly	153
As to forwarding summons to another division	154
To enter in foreign summons book..... (a)	154
Not authorized to receive money on such summons	(b) 154
To prepare lists.....	155
The jury list and judge's list—	
Judgment debtors' list.....	
Headings of lists—	
Jury summons.....	156
To prepare affidavit of service—	
In transferred cases	157
To notify parties.....	158
Certificate of clerk who issued summons.....	159
When final judgment entered.....	160
Notice postponed judgment	161
Where notice of dispute given, if confession, or no notice of defence	162
To send notice of receipt of money.....	163

CLERK—(*Continued*).

RULE.

Not to withhold moneys of suitors	164
Money received on suit entered by solicitor or agent.....	165
Where pltf. proceeding for remainder of claim.....	166
When judge has granted leave to dispute.....	167
To notify all parties in garnishee proceedings of any notice given in suit.....	168
Shall register letter and procure P.O. certificate.....	169
Upon application for new trial.....	173
Shall make out costs in detail.....	174
When required, shall give statement of, including bailiff's fees, on payment of fee	175
Annual return of fees to inspector.....	176
Duplicate for treasurer	177
Shall pay over therewith proportion of fees—	
Shall make list of unclaimed moneys.....	178
To lay before judge returns of bailiff.....	179
Report in writing as to sureties of himself and bailiff.....	180
To make return to inspector of number of judgment debtors ordered to be committed.....	181
Where transfer of cases to High Court.....	182
Where summons not served in time to make notice of sittings available	190
To receive bailiff's statement as to warrants and executions in his hands.	193
To file same.	
Where summons sent to a foreign court	191
If proceedings hindered or delayed by him.....	195
Not to be concerned in purchase, or have personal interest in suit.....	196
Not to be engaged as agent by himself or partner in conduct of suit	197
Settlement by deft. must be made with clerk in which suit entered	198
Shall keep judgment debtors' book.....	201
Renewal of warrant to be endorsed by.....	205
Application to judge for renewal.....	204
To give notice in action where notified of change of interest..	224
To use books and forms authorized.....	242
To enter satisfaction of judgment.....	256
Duties on application for new trial.....	283
Notice in case of postponement when neither of the parties appear at trial	286
To tax witness fees.....	291
To report charges of clerk of foreign court.....	292
Not required to take any proceeding until fees paid.....	297
Deposit to be made with him for bailiff's fees, where party insists upon bailiff making attempt to find property	298
May allow bailiff mileage although attempt unsuccessful in such case.....	
To prepay and register all letters and notices.....	300
To send stamps for return postage to judge.....	301
MASTER AND SERVANT—	
To file judgment of Court of Appeal.....	302
Forms to be used by him under Master and Servant Act. .	306
Notice of appeal and affidavit of service.....	310
Enter cause in procedure book.....	311

CLERK—(Continued).

RULE.

May require affidavit of justification.....	312
To endorse sufficiency of sureties on bond	313
To be furnished with post-office address of justices	314
To notify them.....	315
If jury required by appellant.....	316
If by respondent.....	317
Fees for services under this Act.....	318
May issue subpoenas to witnesses	319
LINE FENCES—To receive notice of appeal and affidavit of service upon fence-viewers	320
To notify judge.....	321
To notify fence-viewers and parties	322
To enter on judge's list.....	323
To issue subpoenas.....	324
Fees for services	325
To notify clerk of municipality of judge's order.....	327
To hold money paid as indemnity for costs, subject to judge's direction	328
DITCHES AND WATERCOURSES—To receive notice of appeal and certified copy of award	330
To notify judge.....	330
To notify engineer and parties	331
When to be entered on judge's list.....	332
To issue subpoenas	333
Fees for services.....	334
To notify clerk of municipality of judge's order.....	336
To hold money paid as indemnity for costs subject to judge's direction.....	337
CONTRACT—When a <i>prima facie</i> case of liability is established	259
COURT—Means the Division Court having jurisdiction in the action, etc.....	(16) 2
CROSS-ACTION—CROSS-CLAIM.....	106
CLAIMANT—Goods and chattels seized in possession of	(a) 32
Requirements of, when served with summons.....	33
If he shall not have complied with rule.....	34
Judge may allow him to deliver claim.	
Where claimant claims damages from creditor and bailiff.....	(a) 35
To indemnify clerk and bailiff.....	(g) 35
May prevent sale by depositing value of the goods.....	37
In default bailiff may sell.	
CONSENT—By consent of all parties interpleader claim may be tried, though rules not complied with.....	33
Judge may direct claim to be tried without consent.....	33
CLEAR DAYS—How reckoned.....	(17) 2
CONFESSION—Before action—	
What must be shown therein	102
Time of application for judgment on—	
If time expires affidavit necessary.	
CHANGE of place of trial.....	24
Proceedings in transferred cases.....	157

	RULE.
CHANGE of Parties—Where action commenced in the name of wrong person.....	207
Where a wrong defendant.....	208
CHANGE of interest before judgment.....	224
Notice to be given by party to whom interest shall have come.	
Clerk shall give notice—	
Substitution of debt.....	225
Change of interest or new capacity.....	226
Notice of order therefor.....	227
Person under disability may apply to vary.....	228
Person under disability not having guardian.....	229
Where pltff. or debt. dies, and person entitled to proceed fails to appear.....	230
Procedure book should show changes.....	231
COUNTER-CLAIM—May be set up by attaching creditors.....	28
By debt. against pltff's claim.....	105
Shall have the same effect as statement of claim in a cross-action.....	106
Application to exclude.....	107-8
Where established against pltff's claim.....	109
Judgment on may be entered at discretion of judge.....	110
So much for pltff. on claim and so much for debt. on counter-claim—or for balance.	
Where when set up by debt. the action is stayed.....	111
May be proceeded with, although action discontinued or dismissed.	
Where it is sought to recover specific property.....	112
Where party claims retention of property by virtue of a lien	
Amount claimed may be paid into court to abide event.	
Property may be given up upon such payment.....	
Judgment—where pltff. does not appear.....	113
Rule where matter involved beyond jurisdiction.....	114
Competence of the court not affected thereby to dispose of the whole matter in controversy—	
But no relief exceeding court's authority.	
Notice required to be given to pltff. where debt. desires to enter.....	115
Time limited to six days before trial—	
If pltff. living without the division, notice to be given to clerk—	
Copies of counter-claim or set off required—	
Clerk to give notice.	
If a promissory note.....	255
Deft. entitled to avail himself of, when pltff. proceeds against one of several defts. only, under sec. 106.....	282
CONTESTED CASES—What shall be considered.....	288-9
COMMITMENTS (<i>See Warrants</i>)—Returns of to be made to inspector..	181
Warrants of.....	203
Continue in force for six months.....	204
Renewal of.....	
Duty of bailiff in executing.....	187-8
Payment on arrest.....	206
COUNSEL fee.....	252 (a), 288, 285, 290

	RULE.
COSTS (<i>See also Fees and Taxation of Costs</i>)—	
Of concurrent summons.....	15
Where interpleader claim dismissed.....	35
Amount taxed bailiff to be shown in p. b.....	151
Clerk to make out bill of.....	174
Where practicable, to be taxed on day of action.....	(a) 174
Statement of to be given to parties requiring.....	175
Where plttf. discontinues after deft. has prepared for trial..	258
Allowance by judge; when application should be made....	295
In action against executors.....	100
Of witnesses.....	291
Under Master and Servant Act.....	318
Of officers.....	296
Indemnity for.....	328
Deposit for bailiff's fees.....	298
To be paid him out of deposit, if unsuccessful.....	298
CONSOLIDATED Assessment Act, 1892	308
COMPENSATION in action of detainee.....	246
CORRESPONDENCE —Clerk to answer promptly.....	153
To be furnished with necessary postage—	
Letters to be registered.....	169
Postage to be costs in the cause.....	300
Postage with fees in advance for transmitting papers.....	173
DEFENDANT —Where there are more than one, residing in different counties.....	15
In interpleader suit.....	(a) 31
Bond taken by bailiff for goods replevied assignable to.....	47
May apply to judge to vary writ or order for replevin.....	58
Notice to plttf. of dispute necessary.....	59
Entitled to avail himself of set-off or counterclaim, when plttf. proceeds only against one of several defts., under sec. 106.....	282
Settlement must be made by, with clerk..	198
DEFENCES —By attaching creditors.....	27
In replevin (<i>See Replevin</i>).	
In garnishee proceedings (<i>See Garnishee</i>).	
By executors or administrators (<i>See Executors, etc.</i>).....	91
Notices of defence (<i>See also Notices</i>).....	
Where portion of claim admitted.....	101
Clerk to notify plttf.—	
Subsequent proceedings—	
Notice may be given by plttf. that he will admit any part of claim, counterclaim, etc.....	103
Notice of set-off, counterclaim, etc., sufficient notice of disputing plttf.'s claim	104
By way of counterclaim.....	105
A deft. minuted may be let in	121
When notice of dispute filed—if confession given, or failure to give notice of defence	162
On leave granted to defend.....	167
Where defence only for part.....	129
Leave to defend under the 112th section	277
When only one of several defts. proceeded against	282

	RULE.
DETINUE—Deft. may tender subject of action and pay money into Court as damages	246
Practice, how regulated.	(a) 246
DISCONTINUANCE of action.	252
DEATH OF PARTIES—Action not abated by	223
DISTRICTS—Rules shall extend to provisional judicial, territorial and temporary judicial, as far as applicable	260
DEBT ATTACHMENT BOOK—Entries therein	85
To be kept by clerk.	146
DAMAGES—In interpleader (<i>See Interpleader</i>).	
In replevin (<i>See Replevin</i>).	
DEPONENT (<i>See Affidavit and Oath</i>).	
DEPOSIT of fees.	
When jury required.	316-317
DOGS AND SHEEP—Forms to be used in proceedings on appeals under the Act to impose a tax on dogs for the protection of sheep	307
DITCHES AND WATERCOURSES—The practice in appeals.	309
Proceedings thereunder.	330-8
Clerks' and bailiffs' fees in suits.	334
EXECUTION creditor—when defendant.	(a) 32
ENTERING CLAIM in replevin.	46
EXEMPTION—From garnishment.	71
Primary debtor to establish fact.	
ELOIGNED—When bailiff makes return of, writ of withernam to issue	54
EXCESS ABANDONMENT OF—Shall be done in the first instance.	7
EXECUTORS AND ADMINISTRATORS.	
Meaning of words "executor" and "administrator" s.s. 4, 9	
What party suing as may charge in summons.	82
Particulars to be given.	
Judgment in case of waste.	90
Where representative character denied.	91
Or release alleged—	
And judgment for pltff.	
Where representative character admitted and demand denied, if pltff. prove it.	92
Where administration of assets pleaded, and pltff. proves demand and deft. proves the administration.	39
Where administration of assets not proved and pltff. proves his demand.	94
Where administration of assets proved.	95
Where deft. does not prove alleged administration and has not established any other ground of defence.	96
Where judgment is given that the amount be levied upon assets, when they shall come into the hands of deft.	97
Proceedings if assets have come since the judgment.	
Waste may be charged in summons.	
Where payment made into Court.	98
Where deft. fails in any of his defences.	99

EXECUTORS AND ADMINISTRATORS—(<i>Continued</i>).	RULE.
Plaintiff's costs of disproving.	
Where notice to creditors and distribution of assets pleaded. (a)	99
Notice of such defence, and that there has been a proper audit, must be given.	
In actions by.....	100
If plttf. fail—	
What particulars of claim must specify—	
Judge may order other persons to be made parties—	
Where claims may be joined.	
EXECUTION—(<i>See Absconding Debtor</i>).	
Where several against absconding debtor	30
Where judgment by default against some of defts. sued— under sec. 109.....	120
Return required when issued to bailiff in another county. .	124
Where required to be executed out of division.....	124
May be executed by bailiff of any court in county—	
But not issued to bailiff in another county—	
On judgment on award.	126
Deft. entitled to, on judgment on set-off or counter-claim. .	127
Where judge stays—and orders amount to be paid by instalments.....	128
Where judge has made an order empowering clerk to sign final judgment, under sec. 111.....	130
May issue forthwith, where final judgment signed under sec. 109.....	131
How printed—(on half sheet foolscap).....	132
UNDER THE CREDITORS Relief Act—	
Where execution filed with sheriff	133
When he is unable to make money—	
Creditor may obtain return of file with clerk of court in which judgment recovered—	
Clerk shall enter on procedure book—	
Shall become a judgment of the court—	
Effect of sheriff's return—	
May be issued at any time within six years, during the lives of the parties	139
Cases in which application must be made upon affidavit for leave to issue	140
Not to issue on judgment over six years old.	141
Leave of the judge may be obtained—	
Such leave shall be expressed on process—	
Practice on renewal.	142
Where one or more of several plttfs. or defts. die.	143
Duty of bailiff on receiving.....	185-8
EXECUTIONS—To be returned within 30 days unless renewed..... (a)	185
Returns to..... (b)(c)(d)	185
When seizure too recent to sell within the 30 days—	
When returned property on hand for want of buyers—	
Bailiff to enter payments on....	189
When new process necessary—	
Return by bailiff, under oath, of all executions in his hands	193
Memo. of clerk thereon.....	194
For unpaid fees to clerks.....	299

	RULE.
FLOODING LANDS	23
FORMAL objections	
No proceeding shall be defeated by	236
Nor for non-compliance with rules unless the judge directs.	237
Nor application to set aside process for irregularity be allowed	238
FORMS—Authorized	(a) 242
Except when otherwise provided by statute must be used ..	243
FEE BOOK—To be kept by clerk (<i>Sec 68</i>)	146
To be kept by bailiff	(e) 147
FEES and Costs (<i>See Costs</i>)—On warrant of commitment	187
To judgment debtor	202
Counsel fee, where settlement before trial	(a) 252
Counsel fee	288-90
Witness fees	291
Foreign fees and disbursements—full statement of to be given	292
If not, home clerk to report to judge—	
Of officers to be paid in advance	296-7
Under Master and Servant Act	317
Under Ditches and Watercourses Act	334
Under Line Fences Act	325
FENCE VIEWERS	320
To be notified of time and place of hearing	322
FOLIO—The word “folio” shall mean 100 words	(24) 2
FOREIGN COURT—Meaning of and of “foreign division”	(8) 2
Service of summons in	154
Return of service of process, etc.	292
Service on foreign corporations	21
Foreign summons book	(a) 154
FORFEITURE of office—Bailiff failing to pay over money	183
By clerk or bailiff	196-6
GAMBLING DEBT—Court has no jurisdiction on note for, etc.	237
GARNISHEE PROCEEDINGS—	
Application under 178th section	68
Requirements of—	
Who may apply to the judge for directions	69
Judge may add parties and make order ..	70
Where primary creditor fails	70
Disposal of controversy between primary debtor and gar- nishee—	
Where exemption claimed	71
Primary debtor to establish fact—	
If debt for wages or salary	73
Memorandum as to debtor required—	
Whether debt for board or lodging—	
Copies of particulars of claim—	
Service of summons	74
Service on primary debtor	75
Service need not be personal, if judge so direct	76

GARNISHEE PROCEEDINGS—(<i>Continued</i>)	RULE.
When debt claimed by a third party.....	77
Proceedings thereon—	
Where summons issued from foreign Court.....	78
Transcript shall be filed—	
No payment a discharge, without order.....	79
Where money paid in not accepted.....(a)	79
Money shall not be paid out until after judgment—	
Any costs awarded to be deducted—	
Where garnishee pays into Court before trial.....	80
Not personally liable for costs—	
Duty of clerk when money paid in by garnishee.....(a)	80
Proceedings thereafter (b), (c)—	
Proceedings on application under sec. 195.....	81
Bond to be given under sec. 196.....	82
Bond may by order be assigned to garnishee.....	83
Costs of execution against garnishee.....	84
Proceedings to be entered by the clerk.....	85
 DEFENCES IN GARNISHEE PROCEEDINGS—	
All parties interested entitled to set up defence.....	86
Particulars of defence or admission to be filed with clerk—	
Who shall send copies to the parties—	
Primary creditor may admit or accept and notify clerk—	
Copy of notice to be sent by clerk to garnishee—	
In the absence of notice, judgment may be given.....(e)	86
Effect of failure to file notice by primary creditor.....(f)	86
Costs of notices required to be given under section 188.....(g)	86
Where garnishee or primary debtor does not appear.....(h)	86
If only some of the parties served.....(i)	86
Forms to be used in proceedings under the Judicature Act..	87
Same proceedings under D. C. Act, as far as rules and forms applicable—	
All proceedings to be entered in procedure book.....	88
Clerk's notice to parties before trial—should show time and place of sittings—	
 HUSBAND AND WIFE—Where husband or wife improperly joined or omitted in suit.....	220
Claims against may be joined.....	232
 “HOME COURT”—Meaning of, and of “home division”.....(7)	2
 INTERPRETATION.....	2
 INTERPLEADER—Service of summons.....	32
Summons shall issue on application of bailiff.....(d)	35
Shall be issued from the court from which process issued.....(e)	
Or the court holden for the division under which seizure made, at option of bailiff—	
Creditor and claimant may be summoned—	
Judge may change place of trial—	
Party issuing process must make deposit.....(f)	
Amount may be according to value of property or otherwise—	
Practice and proceedings.....	34-7
 INSPECTION—When order for is made.....	257
Of property, may be ordered by judge.....	279
Of documents.....	287

	RULE.
INFANTS—When a minor may sue.....	234
Where he applies to enter action, other than for wages.....	235
JUDGE—May grant leave to bring action under sec. 83.....	14
May direct as to costs of concurrent summons.....	15
May amend or alter ordinary for special summons.....	26
May order hearing of attachment before the month.....	27
May change place of trial of interpleader.....(e)	35
On application may order sale of perishable goods.....	36
May grant or refuse writ of replevin.....	44
May direct bailiff to take bond—	
May impose other conditions—	
May grant leave to substitute service of replevin.....	57
May let deft. in, if he fails to give notice of dispute in replevin in time.....	59
May find value of goods distrained.....	60
May add parties in garnishee action and make order.....	69
And make order as to service of summons.....	76
May make order to exclude counter-claim.....	107
May order independent action in any case of counter-claim.....	108
May order issue of transcript before time.....	136
May remove stay of proceedings.....	245
May adjourn hearing to enable party to comply with practice.....	250
Judge of county court or any other judge may act for him..	254
To make order for detention and inspection of property....	257
May make order for the preservation, etc., of subject of litigation.....	259
Inspection of property by.....	279
JUDGMENT DEBTOR—	
Summons for examination.....	200
Requirements for—	
If discharged cannot be again summoned without notice....	201
Non-attendance of, shall not be considered wilful unless tendered payment when summoned.....	202
JUDGMENT DEBTOR'S BOOK—To be kept by clerk.....	146
Entries to be made therein.....	201
JUDGMENTS—Before judgment judge may, upon terms, permit of abandonment of excess in claim.....	7
Up to, judge may direct notices to be served.....	20
In case of several against an absconding debtor.....	30
On application for writ of replevin.....	44
IN REPLEVIN—	
By default in replevin.....	59
Pltff. at liberty to sign final, for costs.....	60
Where distress for rent.....	65
Where distress is for damage feasant.....	66
For defendant in replevin.....	67
IN GARNISHEE PROCEEDINGS.....	70
Money not to be paid out until after—where garnishee pays into Court.....(a)	79
In case the primary creditor had already obtained.....(a)	80
EXECUTORS AND ADMINISTRATORS—	
Where executor or administrator has wasted assets.....	90

JUDGMENTS—(Continued).	RULE.
Where representative character denied, or release alleged...	91
If plttf. proves demand	92
Where plttf. proves the demand and deft. proves the admin- istration.....	93
Where deft. does not prove the administration alleged....	94, 96
Where deft. proves the alleged administration	95
Where assets come to hand after	97
Where, if defences fail	99
WHERE NO DISPUTE, or where portion of claim admitted....	101
ON COUNTERCLAIM	109
SPECIAL SUMMONS where plttf. does not appear.....	113
Against those served only with	116
When judgment may be entered.....	117
When clerk may enter judgment.....	118
When final judgment may be signed	119
When one of several defts. has given notice of disputing claim	120
On confession.....	122
When not entered by default within one month.....	123
When given against deft. pursuant to sec. 110.....(a)	123
How entered in procedure book.....	125
When and where payable.	
After award made.....	126
When for defendant on set-off or counterclaim	
Where judge stays.....	128
Where defence applies to part, judgment for such part as defence does not apply to	129
Application for final, under sec. 111.....	130
Where signed by the clerk under sec. 109.....	131
Proceedings on judgment and execution under the Creditors' Relief Act.....	133
Effect of sheriff's return	
TRANSCRIPT of to foreign Court or County Court.....	134
How prepared (full sheet foolscap).....(b)	134
Not to be issued where proceedings have abated.....	135
Nor on a judgment over six years old and no proceedings had thereon—	
Unless such judgment shall have been revised.	
In cases brought to trial transcript shall not issue until after after fourteen days.....	136
Entries to be made in procedure book.....	137
Procedure book for that purpose be the transcript of judg- ment book.	
All special judgments and orders, how prepared.....	138
Application may be made to judge to vary.	
When finally settled shall be filed and mounted in procedure book.....	
REVIVING	139
Cross-judgments to be set off.....	144
Postponed—practice in	161
JUDGMENT—Satisfaction of.....	256
Against married woman, for liabilities incurred during mar- riage.....	273
Where a judgment before marriage	274
Of Court of Appeal	302-4

	RULE.
JURISDICTION—Where the court has no.....	233
Where counterclaim involves matter beyond	114
Shall not affect competence of the Court—	
But no relief exceeding the Court's authority.	
JURY—In replevin actions	64
May find the value of goods distrained	65
JURY CASES—Preparation of lists.....	155
Mode of proceeding in summoning	156
Judge power to non-suit, where hearing is by.....	275
On second trial	283
Judge may make condition for granting new trial....	233
Inspection may be ordered by.....	279
No leave to bring suit under 83rd sec. other than adjacent	
division	22
In action for flooding lands.....	23
LEAVE TO BRING action under 83rd sec.....	14
LEAVE TO DISPUTE plttf's claim.....	277
LANDLORD—Claim for rent.....	32-33
Amount and particulars required to be stated.....	33
LETTERS—To be prepaid and registered.....	169
Postage and registration.....	300
LIQUORS—Court no jurisdiction in action for liquors drank in tavern.	233
LINE FENCES—Appeals thereunder.....	320
Practice and proceedings.....	320-9
Clerks' and bailiffs' fees for services.....	325
LISTS—Preparation of.....	155
MONEY paid into Court.—Duty of clerk.....	163
Must not be withheld because of accounts between clerk	
and bailiff.....	164
Where received on suit entered by solicitor or agent	165
When in part payment of amount claimed and plttf. does	
not accept.....	170
Paid in full satisfaction	171
Tender of before action.	
List of unclaimed.....	178
To transmit to County Crown Attorney.	
Suitors', how payable	247
In action of detinue.....	246
How payable, when transcript sent to another division....	248
When received by bailiff.....	186
MINOR—When a minor may sue.....	234
Where he applies to enter action, other than for wages....	235
MARRIED WOMEN—	
Are capable of suing and being sued	270
In suits against, what shall be inserted in claim.....	271
If summons be a special summons and no dispute.....	272
Judgments against.	

	RULE.
MASTER AND SERVANT ACT—Appeals.....	305
Forms to be used.....	306
Sureties and bond.....	312-3
If jury required.....	317
Fees of clerk and bailiff.....	318
Subpoenas to witnesses.....	319
NAMES OF PARTIES—To be stated in full.....	3
But if pltf. not acquainted with.....	3
NOTICES AND WARNINGS on summons.....	13
Notice of change of venue.....	24
Notice of list of creditors etc., of absconding debtor.....	(d) 31
To vary writ in replevin or order.....	58
Notice of disputing claim in replevin.....	59
In garnishee proceedings (<i>See Garnishee</i>).	
In defences (<i>See Defences</i>).....	101
Of admission of part.....	103
How served—	
Notice of set-off, or counter-claim, or other statutory defence	
—sufficient.....	104
In transferred cases.....	159
Where notice of dispute given and deft. gives confession or	
or failed to give notice of defence.....	162
On receipt of money.....	163
Notice to solr. or agent.....	165
Where pltf. proceeds for remainder of claim.....	166
On leave granted to defend.....	167
Upon application for new trial.....	173
All notices required by rules or practice of the court shall	
be in m.s. or print.....	240
NEW TRIAL—Application for.....	172
Summary application for.....	249
Application for may be made <i>viva voce</i> and determined on	
the day of hearing if both parties present.....	283
If made when both parties are not present.....	283
Copy of affidavit and application shall be served.....	(a)
Papers must be delivered to clerk within 14 days.....	(b)
And transmitted to judge with copy original claim, etc.	
Duty of clerk after receiving such papers.....	(c)
Parties may be heard before judge—	
If application be refused.....	(d)
Or if party applying fail to comply with terms—	
Conditions may be imposed by the judge on granting.....	(e)
Where judgment, under 144th sec. delivered in writing at	
at the clerk's office.....	(f)
If instead of granting judgment pronounced.....	284
Judge's authority in dealing of application and setting aside	
verdict of jury.....	285
But non-suit may be ordered—	
ORDINARY SUMMONS.....	10
OATH—Meaning of word (sec. 6).....	2

	RULE.
OBJECTIONS—formal.	
No proceeding shall be defeated by.....	236
Nor for non-compliance with rules, unless judge directs....	237
Nor application to set aside process for irregularity allowed	238
ORDER—Duty of clerk to enter	124
All special to be prepared by clerk.....	138
To be minuted.....	243
For inspection, etc., of property.....	257
Where order made, may examine upon oath.....	258
For the protection, preservation, etc., of subject of litigation	259
OFFICERS' FEES—Those in schedule of tariff only to be taken.....	296
Clerk shall not be required to take proceedings until paid...	297
Deposit necessary for bailiff's fees, when attempt to find property insisted on.....	298
In such cases, although unsuccessful, bailiff entitled to mileage.....	298
Order for enforcing payment of.....	299
PARTICULARS.....	3
In suits under sec. 82.....	5
In action against clerks and bailiffs.....	6
Where excess is abandoned.....	7
PROCESS.....	8
Must be under seal and signed by the clerk— And numbered to correspond with suit—	
First process.....	9, 10
Alias or pluries.....	12
Where suit under the 29th sec.....	13
PROCEEDS UNDER attachment, to be distributed rateably.....	31
Where not sufficient—	
PLAINTIFF in interpleader.....	(a) 31
On entering claim in replevin must specify.....	46
PAYMENT into court—may be made where claim for damages made against bailiff and creditor.....	(c) 35
By garnishee.....	80
When plttf proceeds for the remainder after notice of pay- ment of part.....	244
PAYMENT into court in action of detinue.....	246
PROCEDURE Book—Shall be the transcript of judgment book for enter- ing proceedings on transcript under sec. 217.....	137
PRIMARY Debtor—to establish exemption from garnishment.....	71
To give notice of acceptance of money paid in.....	(a) 80
PAYMENT of judgment debtor for attendance.....	202
PAYMENT on arrest.....	209
PROVISIONAL counties—Rules and forms shall extend to them as far as applicable.....	260
POSTPONEMENT—of judgment without naming a subsequent day.....	161
Postponement of delivery of judgment.....	276

	RULE.
PUTTING off trial.....	281
PROMISSORY Note—When pltf's claim or def't's counter-claim consists of.....	255
POSTAGE AND REGISTRATION—Cost of.....	300
Clerk to be furnished with for answering.....	153
And with fees upon application for new trial.....	173
All necessary notices by the clerk shall be prepaid and registered—	
When papers forwarded to judge—	
Stamps for return postage must be enclosed—	
Cost of postage and registration shall be costs in the cause	
RULES—Time of operation.....	1
Actions pending—	
Shall extend as far as applicable to provisional counties, provisional judicial districts, territorial districts, and temporary judicial districts	260
RETURN—of service of summons.....	16
RETURNS of clerk to inspector.....	176
To provincial treasurer.....	177
Of bailiff, for judge.....	179
Of judgment debtors ordered to be committed.....	181
RENEWAL of writ of summons.....	25
Plainiff may renew before expiration of 12 months—	
Application may be made to judge—	
Renewal to be marked with date of issue (b)	
In such case original writ available to prevent operation of statute (c)	
RENT—Claim of landlord.....	32,33
Amount and particulars require to be stated—	
REPLEVIN.....	38
Jurisdiction limited to \$60—	
When goods replevable.....	39
When action may be brought—	
No party to an action shall replevy	40
No other cause of action shall be joined in the summons	41
Court in which action may be brought.....	42
Conditions on which writ can issue.....	43
Judge may proceed on <i>ex parte</i> application.....	44
May direct notice to show cause—	
May grant or refuse writ, or may impose terms—	
Where writ sued out for personal property not previously taken	49
If pltf. fails, def't. to be indemnified against all—	
Damages and costs in defending the action—	
Bond to be taken by bailiff—	
Also to indemnify def't.—	
In case writ issues without an order.....	50
Bailiff's duties—	
Concealed property.....	51

REPLEVIN—(Continued).

RULE.

In case demand of bailiff for deliverance not complied with	
Search of the person and premises may be made.....	53
If bailiff makes return of property <i>eloigned</i>	54
Service of writ of replevin.....	55
Writ not to be served until bailiff has replevied.....	56
Substitutional service thereof.....	57
Deft. may apply to vary writ or order.....	58
Or discharge same—	
Notice of disputing claim necessary.....	59
Or judgment for plttf. by default—	
Costs of plttf. if judgment by default.....	60
Payment by deft. into court.	61
Payment of money and waiver.....	62
Formal pleadings not necessary in replevin action.....	63
Either party may require jury, where value exceeds \$20 ..	64
Where the distress is for rent or otherwise and deft. succeeds	65
Judge or jury may find value of goods—	
Judgment in case the value be greater or less than sum due	
Where deft. entitled to judgment for return.....	66
Judge or jury may find amount of damages—	
Where deft. justifies, judgment shall be for return of goods	

SUMMONS—

Ordinary.....	10
Special	11
Where <i>alias</i> and <i>pluries</i> necessary	12
Return of service of.....	16-7
Time within which service must be made.....	18-9
On corporation, how served.....	21
Conditions under which leave granted under 83rd sec.....	22
In action for flooding lands.....	23
May be altered or amended by judge—ordinary for special summons and <i>vice versa</i>	26
In interpleader	32
Service of summons on claimant....	33
Summons in replevin.....	45
Summons in garnishee proceedings.....	74
To foreign Court.....	154
To jury.....	155
To be filed when final judgment entered.....	160
If not served in time to make sittings of Court available....	190
When sent to a foreign Court	191
Must be served in due time before holding Court.....	192
Days not to be counted.	
Judgment summons—requirements for	200

SUBSTITUTIONAL SERVICE—

Requirements for, on deft., primary debtor and garnishee..	20
--	----

SET-OFF (See Counterclaim)

Judgment on	109
May be proceeded with though action stayed	111
If a promissory note	255
Deft. entitled to avail himself of, when plttf. proceeds only against one of several defts. under sec. 106.....	282

SURETIES—In actions against officers and their..... 6

	RULE.
SURETIES of clerk and bailiff—Clerk to report on	180
STAY of proceedings.....	245
May be removed by judge	293
May stay in any case where if in High Court might be stayed	294
May be stayed until security for costs given	247
SUITORS' MONEY—How payable.....	256
SATISFACTION of judgment	174
TAXATION of costs.....	174
TRANSCRIPT of judgment—	
Must be filed where garnishee summons issues from foreign Court.....	78
Under sec. 217	137
When judgment summons wanted	200
When issued to another division, how money is payable....	248
TRIAL LIST.....	154
By jury....	156
TRIALS AND HEARINGS—Where by a jury	275
Not concluded if judgment postponed to a subsequent day..	276
Putting off	281
TENDER of money in part payment.....	170
Of payment in satisfaction.....	171
Before action.	
TRANSFERRED cases.	157
Transfer of cases to High Court	182
UNAUTHORIZED FORMS and Proceedings—	
All proceedings, forms and documents to be similar to forms to rules.....	242
VENUE—Change of.....	24
Notice of required.	
WARNINGS—ON SUMMONS	13
WARRANT OF COMMITMENT	203
Requirements of—	
WARRANT—Duty of bailiff on receiving.....	187
WITHERNAM, to issue on bailiff's return of property having been elojined	54
Continues in force six months—	
Renewal upon affidavit.	
Application to judge for renewal.....	204
Renewal of to be marked by clerk	205
On payment of amount endorsed on, debt. may be discharged	206

INDEX TO FORMS.

INDEX TO FORMS

AS GIVEN IN THE REVISED RULES, ORDERS, AND FORMS.

—◆—

Page and Number of Form referred to are those of the Revised Rules, etc.

	A	FORM.	PAGE*
APPRAISERS' FEES.....		3	80
AFFIDAVITS—			
General form of heading and conclusion.....		22	96
For leave to sue a party residing in an adjoining division		23	97
In a division adjoining one in which debtors reside, where there are several.....		24	97
Schedule referred to therein.....		25	98
For attachment against absconding debtor.....		26	99
Where the debt is over \$100.....		27	100
Of service of summons.....		28	100
On absconding debtor at last place of abode.....		29	101
By leaving at dwelling, when no person found therein.....		30	101
At last place of trade or dealing.....		31	101
Of execution of confession.....		32	101
For judgment summons, under sec. 235.....		33	102
Against a judgment debtor, under sec. 239.....		34	102
Of execution of any instrument		35	103
For revival of judgment.....		36	103
Of executor or administrator to revive		37	103
For revival of judgment against an executor or admin- istrator		38	104
Under sec. 217, as amended by sec. 24 of the Act of '89, for further proceeding without a judge's order, after transcript to a foreign court.....		39	104
Of disbursements to witnesses.....		40	104
(For forms of oaths, etc., see Form 41, p. 105).			
Affirmations—forms' of.....		41	105
By a Quaker, etc.....(o)			106
Jurat to affidavit by illiterate or blind deponent.....(n)			106
On application to change venue.....		42	107
For order to garnish debt.....		43	107
General form of heading and conclusion of in garnishee proceedings.....		44	108
To obtain judge's order for replevin.....		61	115
To obtain writ without judge's order.....		62	116
Of service of garnishee summons after judgment, on agent of a body corporate under sec. 182		74	123
Of service of garnishee summons before judgment on agent of a body corporate under sec. 185.....		75	124
Of signature to admission.....		231	177

	FORM.	PAGE.
ARBITRATOR or Umpire—oath to be put by.....(m)	106	
ATTACHMENT against an absconding debtor.....	60	115
ASSIGNMENT to be endorsed on replevin bond.....	66	118
ATTACHING order (judge's).....	73	122
ATTACHMENT of debts.....		143
ARBITRATOR or Umpire—		
Appointment of a third.....	182	160
Appointment for meeting of reference.....	183	160
Enlargement to be endorsed.....	184	160
Order of reference, containing special clause.....	185	160
AWARD.....	186	161
AGREEMENT—Not to appeal.....	192	164
ADMISSION of claim.....	230	177
Affidavit of signature to.....	231	177
APPEALS—		
<i>Ditches and Watercourses—</i>		
Notice of Appeal.....	240	180
Order by judge.....	241	180
Judgment.....	242	181
Certificate of award.....	243	181
<i>Line Fences—</i>		
Notice of Appeal.....	244	182
Order of judge.....	245	182
Judgment.....	246	183
<i>Master and Servant and Tax on Dogs—</i>		
Notice of Appeal.....	247	183
Appeal bond.....	248	184
Approval of clerk.....	249	184
Demand of jury.....	250	185
B		
BAILIFF'S TARIFF OF FEES.....	2	79
BOOK—Procedure (superseded by Form Schedule B. to		
Amended Act of 1894).....	4	80
Debt attachment.....	5	81
Cash book.....	6	82-3
Clerk's fee book.....	7	84-5
Index, form judgment debtor's.....	8	86
Order book.....	9	86
Foreign summons.....	10	87
Bailiff's process book, under Rule 185.....	11	88
Bailiff's fee book.....	12	89
Bailiff's cash book (under Rule 189).....	13	90
BOND—Replevin.....	65	117
Assignment to be endorsed.....	66	118
BAILIFF'S return to writ of replevin.....	67	118
BOND—Under sec. 196.....	76	124
On supersedeas to warrant of attachment.....	187	161
On seizure or sale of perishable property.....	188	162
For security for costs, where plff. out of Ontario.....	189	163
Appeal, under Master and Servant Act.	249	184

BAILIFF'S FORMS—

FORM. PAGE.

Appraiser's oath on attachment.....	232	178
Appraisement to be endorsed on inventory.....	233	178
Notice of sale.....	234	178
Return to executions.....	235	178
<i>Feci</i>	236	178
Any part made.....	237	178
When rent levied.....	238	178
Of warrants, executions, etc., Rules 193 and 194..	239	179

C

CLERK'S—

Clerk's tariff of fees.....	1	77
Cash book (clerk's).....	6	82-3
Clerk's fee book.....	7	84-5
Cash book, bailiff's (under rule 189).....	13	90

CLAIM—

Particulars of, in cases of contract.....	14	90
On a guaranty.....(a)		91
On a promissory note against maker.....(b)		91
On a promissory note against maker and endorser.....(c)		91
On a bill of exchange against acceptor and drawer.....(d)		91
On a bill of exchange against acceptor.....(e)		92
On a bond.....(f)		92
On a covenant.....(g)		92
Of pltf's claim in actions of tort.....	15	92
In cases of detinue.....(a)	15	93
In action for damages by flooding.....	16	93
In case of a suit entered under sec. 82.....	17	94
In actions against clerk or bailiff and sureties....	18	94
Counterclaim.....	21	95
Claim in replevin.....	63	116
Contempt—order for imposition of fine for.....	93	128
Particulars of an interpleader.....	168	155
Admission of.....	230	177

CERTIFICATES AND ORDERS OF CLERK AND JUDGE—

Certificate of entries in procedure book, under sec. 45.	212	171
Clerk's certificate of proceedings to Court of Appeal.	213	171
Of Judge as to exception in exemption law, where debt contracted prior to 1st October, 1887.....	214	172

CERTIFICATE of discharge of a party from custody..... 228 177

Of award to be sent to clerk of municipality, under Ditches and Watercourses Act.....	243	181
--	-----	-----

CONSENTS AND AGREEMENTS—

Consent to an appeal, under sec. 148, sub.-sec. 2.....	190	163
To try case in Division Court.....	191	164
Agreement not to appeal.....	192	164
To give jurisdiction.....	193	164

CHANGE OF PARTIES—

Order to proceed after the death of a pltf., after judg- ment.....	218	173
---	-----	-----

CERTIORARI—

Return by Judge to.....	220	174
-------------------------	-----	-----

CONFESSION OF DEBT—	FORM.	PAGE.
After suit.....	229	177
COSTS—		
Undertaking of next friend to be responsible for.....	194	164
CROSS JUDGMENTS—		
Notice of application, under sec. 213, for judge's order to set off	223	175
Judge's order	224	176
Entry of satisfaction of smaller judgment.....	225	176
Entry of partial satisfaction.....	226	176
CREDITOR'S request for discharge of debtor	227	176
COMPLAINT—		
Form of, under The Industrial School Act.....	253	186

D

DEBT ATTACHMENT BOOK.....	5	81
DEFENCES.....	19	94
DEBTOR—		
Request for discharge of	227	176
Discharge of a party from custody.....	228	177
DEBT—Confession of, after suit.....	229	177
DITCHES AND WATERCOURSES—Appeals.....		180
Notice of appeal.....	240	180
Order for trial.....	241	180
Judgment	242	181
Certificate of award.....	243	

E

ENTRY in procedure book under Creditors' Relief Act, where there is a judgment.....	95	128
<i>As to executors and administrators—</i>		
Of judge's order for executor or administrator to revive	103	130
Of order that judgment be revived against	104	130
Of judgment against executor or administrator on devastavit after judgment.....	105	130
Who alleges administration of assets and does not prove same.....	106	131
Where administration proved	107	131
Where administration not proved	108	131
Where plfff. proves his demand and the deft. proves administration.....	109	131
Of ordinary judgment against.....	110	132
Who admits his representative character and denies the demand	111	132
Who denies his representative character or pleaded a release.....	112	132
Who has wasted assets	113	132
Form of entry upon judge's order under sec. 146	180	159

EXECUTION—

	FORM.	PAGE.
Order to suspend.....	101	129
Order postponing under sec. 147.....	102	130
Against goods of debt.....	132	136
In case of several judgments.....	a) 132	137
Where one of several plffs. has died.....	133	137
Against goods of pltf.....	134	137
On judgment for balance of set-off.....	135	138
For counterclaim.....	136	138
Under sec. 82, where judgment obtained against a deft. residing in foreign country.....	137	138
On transcript.....	138	138
For an executor on judgment revived in his favor...	139	139
On judgment revived against an executor or adminis- trator.....	140	139
Against goods of testator.....	141	140
<i>In replevin</i> against pltf., when return of goods adjudged with damages and costs.....	142	140
On order for non-payment of fees to clerk, under sec. 55.	143	141
<i>Against garnishee</i> on judgment already recorded.....	144	141
On a claim not a judgment, where no judgment given against primary debtor.....	145	142
Against primary debtor and garnishee.....	146	142
Against garnishee on judgment recovered against him and primary debtor.....	147	143
Against garnishee for debt and costs under sec. 191..	148	143
Where claim made by some one other than the primary creditor or primary debtor and judge gives effect to claim under sec. 197.....	149	144
Where judge holds the claim void against the primary creditor, under sec. 197.....	150	144
For garnishee's costs.....	151	145
Under Rule 943 of the Con. Rules of the Supreme Court of Judicature of Ontario.....	152	145
Against the goods of claimant or interpleader.....	153	145
For costs.....	154	146
For sale of property seized but unsold for want of buyers.....	155	146
For enforcing order made on appeal under the Act respecting Master and Servant.....	156	147
Against married woman.....	157	147

EXAMINATIONS, NEW TRIALS AND REFERENCES—

Notice of application for order to examine sick, aged, or infirm witness.....	176	158
Order where both parties appear.....	177	158

F

FEEs—Clerk.....	1	77
Bailiff's.....	2	79
Witnesses'.....	3	80
Appraisers'.....	3	80
FEE BOOK—Clerk's.....	7	84-5
Foreign summons book.....	10	87
Bailiff's.....	12	89

G

GARNISHEE PROCEEDINGS—

FORM. PAGE.

Affidavit for order	43	107
General form of heading and conclusion of affidavits in	44	108
Summons to, and primary debtor after judgment.....	70	120
Memorandum, under sec. 177	71	121
Summons before judgment.....	72	121
Warning to.	72	121
“	(a)	73 122
Clerk's memorandum of non-appearance of	(b)	73 122
Memorandum of admission of debt.....		123
Memorandum, where garnishee denies debt.....		123
Affidavit of service of summons after judgment on agent of a body corporate.....	74	123
Affidavit of service on same, before judgment.....	75	124
Bond, under sec. 196.....	76	124
(See <i>Judgments</i> . See <i>Executions</i> .)		

I

INDEX, JUDGMENT DEBTOR'S BOOK.....	8	86
INVENTORY OF GOODS REPLEVIED.....	68	119

INTERPLEADER—

Application of Bailiff for.....	165	154
Landlord's claim for rent, under sec. 269.....	166	154
Summons in.....	167	154
Particulars of claim in.....	168	155
Adjudication on	169	156
Where both goods and damages are claimed and the claim to neither established.....	170	156
Where claim to both is established.....	171	156
Where both goods and damages are claimed and claim established, and money paid into Court sufficient to satisfy damages.....	172	156
Adjudication for damages, where execution creditor recovers against bailiff, who pays money into Court.....	173	157
Where claim to goods established but that for damage is not.....	174	157
Where the claim to goods is not, but the claim to damages is established.....	175	157

INFANT—

Undertaking of next friend to be responsible for debts', costs.....	194	164
--	-----	-----

INDUSTRIAL SCHOOL ACT, THE.....		185
Summons for maintenance	251	185
Order for payment.....	252	185
Form of complaint.....	253	186

J

JUDGMENT debtor's book.....	8	86
JUDGE's attaching orders	73	122
JUDGMENTS—MINUTES OF—		
Against debt, for debt or damages.....	77	124
Under sec. 109.....	78	124

JUDGMENTS—MINUTES OF—(Continued).

	FORM.	PAGE.
Order for immediate, under sec. 111	79	125
Under sec. 111	80	125
Where some defts. served with special summons and others have confessed	81	125
Of non-suit or dismissal for want of prosecution.....	82	125
Of judgment or award	83	125
For debt	84	126
For debt. on set off, where set off in part satisfied....	85	126
For debt. for balance of set off	86	126
In case of counterclaim.....	87	126
Forms of against married woman	88	126
For costs under sec. 209.....	89	127
For debt's costs under R. 252 a.....	90	127
Minute for clerk when judgment postponed.....	91	127
Form of against a firm, etc.....	92	127
Of order for imposition of fine for contempt.....	93	128
Entry under the Creditors' Relief Act where there is a	95	128
Under the Creditors' Relief Act, where proceedings upon a certificate of claim.....	96	128
Order for without plttf's filing note.....	97	129
Against debt. on confession, before action.....	98	129
After action.....	99	129
Where execution postponed by consent of judgment creditor beyond 50 days	100	129
Order to suspend	101	129
Order postponing	102	130

Executors and Administrators—

Order for executor or administrator to revive	103	130
Order to revive against	104	130
Against executor or administrator on devastavit after judgment	105	130
Who admits his representative character and plttf's demand and alleges administration of assets, but does not prove same	106	131
Where administration proved.....	107	131
Where administration not proved.....	108	131
Where plttf. proves his demand and the defendant proves administration	109	131
Ordinary against.....	110	132
Who admits his representative character and denies the demand	111	132
Who has denied his representative character or pleaded a release.....	112	132
Who has wasted assets.....	113	132

Garnishee—

Against garnishee on judgment already entered	114	132
Where debt due by garnishee is payable by instalments.....	115,	117 133
Against primary debtor and against garnishee.....	116	133
Where garnishee has set up a defence which he knew to be untenable.....	118	133
In favor of garnishee, primary debtor, or claimant....	119	133
Where primary creditor fails to prove and proceedings continued between primary debtor and garnishee,...	120	134

JUDGMENTS—MINUTES OF—(<i>Continued</i>).	FORM.	PAGE.
For primary debtor, or garnishee, or claimant against primary creditor.....	121	134
Where set-off of primary debtor exceeds claim of primary creditor.....	122	134
<i>In replevin—</i>		
In favor of plff.....	124	134
In favor of deft. in replevin for rent.....	125	135
In favor of deft. in replevin of cattle, damage feasant.....	126	135
Where not for rent or damage feasant.....	127	135
<i>Detinue—</i> For delivery of goods.....	128	135
Where immediate return is ordered with damages and costs.....	129	136
To pay costs to clerk, sec. 55.....	130	136
On appeal to High Court.....	131	136
Cross.....		175
Judge's order, sec. 213.....	224	176
Entry of satisfaction of smaller.....	225	176
Entry of partial satisfaction.....	226	176
By county judge, on appeal under sec. 11 Ditches and Watercourses Act.....	242	181
By county judge, under the Line Fences Act.....	246	183
JURORS—Minute of order for fine for non-attendance.....	94	128
Pay list of.....	222	175
JURY—Demand of, in appeal under Master and Servant Act....	250	185
JURISDICTION—		
Consent to give to Division Court.....	193	164
L		
LANDLORD'S claim for rent.....	166	154
LIST of unclaimed moneys verified.....	221	174
LINE FENCES—		
Notice of appeal.....	244	182
Order of judge.....	245	182
Judgment.....	246	183
M		
MINUTES of judgment in procedure book.....	77, 123, 124	134
(<i>See Judgments.</i>)		
(<i>See Orders.</i>)		
(<i>See Executors and Administrators.</i>)		
Of order for imposition of fine for contempt.....	93	128
Of fine on a juror for non-attendance.....	94	128
<i>Garnishees—</i>		
Of judgment against garnishees on judgment already entered.....	114	132
(<i>See Garnishees.</i>)		
(<i>See Judgments.</i>)		
MARRIED WOMAN—		
Execution against.....	157	147

MONEY PAID INTO COURT—

	FORM.	PAGE.
Notice of acceptance.....	196	166
List of unclaimed, verified.....	221	174

N

NOTICES—

Clerk's notices to pltf	195	165
Acceptance of money paid into Court.....	196	166
Of trial by a jury and new trial.....	197	167
Under sec. 112, granting leave to dispute.....	198	167
Of return of execution, under sec. 218.....	199	167
Under amended sec. 87.....	200	167
Clerk's notices to either party.....	201	168
Clerk's notices to parties of time fixed by judge for delivery of judgment, under Rule 161.....	202	168

By parties—

Of withdrawal of defence.....	203	168
Of objection to jurisdiction to try counterclaim.....	204	168
Of discontinuance of action.....	205	169
To clerk of change in pltf's. title, before judgment...	206	169
General heading and conclusion of all notices, admissions and orders	207	169
Of demand for statement of names and places of residence of persons constituting pltf's. firm.....	208	170
Answer thereto.....	209	170
Of application for order for names.....	210	170
Notice of appeal under sec. 11, Ditches and Water-courses' Act	240	180
Notice of appeal under Line Fences' Act.....	244	182
Notice of appeal under Master and Servant Act.....	247	183

NEW PARTY—

Order to continue proceedings for or against	217	173
--	-----	-----

O

ORDER BOOK.....	9	86
OATHS—Forms of	41	105
To witness by arbitrator or umpire.....(m)		106
ORDER—Minutes of, for imposition of fine for contempt.....	93	128
Of fine on juror for non-attendance.....	94	128
For judgment, without pltf. filing note.....	97	129
Order to suspend.....	101	129
Postponing execution or judgment.....	102	130

Executors and administrators—

For executor or administrator to revive judgment....	103	130
That judgment be revived against executor or administrator	104	130
Against executor or administrator on devastavit, after judgment	105	130
Against executor or administrator who admits his representative character and the pltf's. demand, and alleges administration of assets, but does not prove same.....	106	131
Where administration proved.....	107	131

ORDER—(*Continued*).

FORM. PAGE.

Where plttf. proves his demand and debt. does not prove administration.....	108	131
Where plttf. proves his demand and the debt. proves administration.....	109	131
On ordinary judgment against.....	110	132
Who admits his representative character and denies the demand.....	111	132
Who has denied his representative character and pleaded a release.....	112	132
Who has wasted assets.....	113	132
In garnishee proceeding. (<i>See Judgments.</i>)		
In replevin. (<i>See Judgments.</i>)		
To pay costs to clerk.....	130	136
On appeal to High Court.....	131	136
For examination of sick, aged or infirm witness, where both parties appear.....	177	158
For new trial.....	178	158
For judgment, under sec. 146.....	179	159
Of reference.....	181	159
For appointment of third arbitrator or umpire.....	182	160
Of reference to arbitrators, containing special clauses.....	185	160
For names of partners.....	211	171
Changing place of trial, under sec. 86.....	216	172
To continue proceedings for or against a new party...	217	173
To proceed after the death of a plttf. after judgment.	218	173
To proceed after change of interest by assignment or otherwise, after judgment.....	219	173
Of judge to set off cross judgments, sec. 213.....	224	176
Entry of satisfaction of smaller judgment.....	225	176
By judge for trial of appeal, etc., under sec. 11 Ditches and Watercourses Act.....	241	180
Of judge for trial of appeal under the Line Fences Act.....	245	182
Order of payment for maintenance, under the Industrial School Act.....	252	185

P

PROCEDURE BOOK—Form superseded by schedule B to Amended Act of 1894.....	4	80
PROCESS book, bailiff's, under rule 185.....	11	88
PRIMARY debtor, summons to after judgment.....	70	120
PARTNERS—Demand for names of.....	208	170
Declaration in answer.....	209	170
Notice of application for order for names.....	210	170
Order for names.....	211	171
PARTIES—		
Change of.....	218	173

Q

QUAKER—Affirmation by.....	(o)	106
----------------------------	-----	-----

R

REPLEVIN—		
Affidavit to obtain judge's order for writ.....	61	115
To obtain without judge's order.....	62	116

REPLEVIN—(Continued).	FORM.	PAGE.
Claim in	63	116
Summons in	64	117
Bond	65	117
Bailliff's return to writ	67	118
Inventory of goods replevied	68	119
REPRISAL—Writ in	69	119
RETURN by judge to certiorari	220	174
REQUEST for discharge of debtor	227	176
S		
SET-OFF	20	95
SUBPOENA (<i>See Witness</i>).		
SUMMONSES AND WARRANTS—		
General form of	45	108
In garnishee notices and proceedings, etc.	46	108
Special summons	47	109
Notices and warnings	47	109
Notice required by sec. 98	48	110
Ordinary summons	49	110
Against an executor or administrator charging a devastavit	50	111
Memorandum to be put on all other summonses	51	111
Warnings to be added, when suit brought under sec. 239	52	111
To executor or administrator where assets alleged since judgment	53	111
To debt. after judgment	54	112
Judgment summons after default	55	112
For payment of clerk's fees, under sec. 55	56	113
To jurors	57	114
To witness	58	114
In replevin	64	117
<i>Summons—</i>		
To witness to appear before arbitrator	59	115
To primary debtor and garnishee after judgment	70	120
To primary debtor and garnishee before judgment	72	121
Under sec. 197, where a third party claims the money garnished	123	134
In interpleader	167	154
To change the place of trial, under sec. 86	215	172
For maintenance, under the Industrial School Act	251	185
SUPERSEDEAS—Bond on	187	161
T		
TARIFF of fees	1	77
TRANSCRIPTS—		
To another division of judgment on special summons ..	164	152
To County Court of judgment on special summons	(a) 164	152
Of judgment on ordinary summons	(b) 164	153
TRIAL—Order changing place of, under sec. 86	216	172
U		
UMPIRE—Form of oath to be put by	(m)	106
UNDERTAKING of next friend to be responsible for debt's costs ..	194	164

	V	FORM.	PAGE.
VENUE—Affidavit to change.....		42	107
	W		
WITNESSES' FEES.....		3	80
WITHERNAM—Capias in		69	119
WARNINGS to garnishee and primary debtor.....		121-2	
WARNING to garnishee	(a)	73	122
WARRANT to levy a fine upon a witness who refuses to give evidence		158	148
Upon a witness who refuses to be sworn		159	148
For disobedience of the subpoena		160	149
Form of in detinue.....		161	149
Of commitment in default of appearance		162	150
Of commitment after examination	(a)	162	150
For contempt in open Court.....		163	151

